

VIDEOTAPE

In The
Circuit Court of the 15th Judicial Circuit
In and for Palm Beach County, Florida

STATE OF FLORIDA, et. al.,

Plaintiff,

-vs-

THE AMERICAN TOBACCO COMPANY, et. al.,

Defendants.

CASE NO. 95-1466AH

DEPOSITION
OF
KIP VISCUSI, PH.D.
July 23, 1997



TRAVELING
TRANSCRIPT™

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A. WILLIAM ROBERTS, JR. & ASSOCIATES

CHARLESTON (803) 722-8414 COLUMBIA (803) 731-5224
GREENVILLE (864) 234-7030 CHARLOTTE (704) 573-3919

1-800-743-DEPO

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1 IN THE CIRCUIT COURT,
2 FIFTEENTH JUDICIAL CIRCUIT
3 IN AND FOR PALM BEACH COUNTY, FLORIDA
4 STATE OF FLORIDA, et al.
5 Plaintiffs,
6 vs. CIVIL ACTION NO. CL 95 1466AH
7 AMERICAN TOBACCO COMPANY, et al.
8 Defendants.
9 VIDEOTAPED DEPOSITION OF: W. KIP VISCUSI, PH.D.
10 DATE: July 23, 1997
11 TIME: 8:24 A.M.
12 LOCATION: COPPER MOUNTAIN RESORT, COPPER
13 MOUNTAIN, COLORADO
14 TAKEN BY: Counsel for the Plaintiff
15 REPORTED BY: JOANNE BLAIR
16 Registered Professional Reporter, CM
17
18
19
20
21 A. WILLIAM ROBERTS, JR., & ASSOCIATES
22 Charleston, SC Columbia, SC
23 (803) 722-8414 (803) 731-5224
24 Greenville, SC Charlotte, NC
25 (864) 234-7030 (704) 573-3919

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1 APPEARANCES OF COUNSEL:
2 ATTORNEYS FOR THE PLAINTIFF
3 STATE OF FLORIDA
4 KERRIGAN, ESTESS, RANKIN & McLEOD
5 BY: ROBERT G. KERRIGAN
6 400 East Government Street
7 P.O. Box 12009
8 Pensacola, Florida 32589
9 (904) 444-4444
10 ATTORNEYS FOR DEFENDANT
11 AMERICAN TOBACCO COMPANY, et al.
12 ARNOLD & PORTER,
13 BY: TIM ATKESON
14 1700 Lincoln Street, Suite 4000
15 Denver, Colorado 80203-0428
16 (303) 863-2313
17 ALSO PRESENT:
18 Tim Gross, Videographer
19 (INDEX AT REAR OF TRANSCRIPT)
20
21
22
23
24
25

STIPULATION

1 It is stipulated by and among Counsel
2 that this videotaped deposition is being taken in
3 accordance with the Florida Rules of Civil Procedure;
4 that all objections as to Notice of this deposition
5 are hereby waived; that all objections except as to
6 form are reserved until the time of trial; and that
7 the witness has reserved the right to read and sign
8 the deposition after review by counsel.
9

10 * * * * *

11 THE REPORTER: This is the videotaped
12 deposition of W. Kip Viscusi in the matter of State
13 of Florida vs. American Tobacco Company held at
14 Copper Mountain Resort, Copper Mountain, Colorado, on
15 July 23, 1997 at 8:24 a.m. My name is Joanne Blair,
16 Registered Professional Reporter. The videotape
17 specialist is Tim Gross. Counsel will now introduce
18 themselves, and then the deponent will be sworn in.

19 MR. KERRIGAN: Bob Kerrigan, representing
20 the State of Florida.

21 MR. ATKESON: Tim Atkeson, representing
22 the defendant.

23 W. KIP VISCUSI, Ph.D.
24 Being first duly sworn, testified as follows:
25

Page

EXAMINATION

1 BY MR. KERRIGAN:

2 Q. Good morning, Dr. Viscusi. My name is
3 Bob Kerrigan. We've previously been introduced this
4 morning. We are going to take your deposition
5 today. As you know, it's being videotaped. I hope
6 that's not too distracting for you. In the event
7 that you need to take any kind of a break for any
8 reason at all, including conferring with counsel, if
9 you will simply say, "I would like to take a break,"
10 it could be for any reason and I will not inquire.
11 It's perfectly appropriate for you to do that for
12 personal reasons or any other reasons that you find
13 the need to take a break.
14

15 Some of the terms that we will be using
16 this morning are terms of art or terms that have
17 specific definitions. For the benefit of the jury,
18 in the event that this videotape is played for them,
19 I may ask you -- if you use such a term that is not
20 commonly known, I may ask you to define that term.
21 We go along in the questions and answers today. In
22 the event that I use a term incorrectly or have
23 included in my question a premise that is not correct
24 or does not reflect your testimony or in any way
25 distorts the question, I would ask you to correct me,

1 and no adverse inference will be drawn from that.

2 The purpose today is to try to ask
3 questions as clearly as I can ask them, elicit
4 responses from you that are appropriate for the
5 question that is asked. So you can help in that
6 respect. In the event that you want to ever go back
7 to a previous answer, it's perfectly appropriate to
8 do that as well. No adverse inference will be drawn
9 by me if you want it to go back and clarify an
10 earlier answer or elaborate on an earlier answer.

11 In the event that I ask a question that
12 assumes something to be true that's not true, I'm
13 sure your counsel will pose an appropriate objection,
14 and he may pose other objections as we go along.
15 Please allow us to talk among ourselves to try to
16 resolve that, and we would not expect you to respond
17 anytime counsel raises an objection.

18 Do you have any reason this morning that
19 you are not prepared to go forward with your
20 deposition?

21 A. No.

22 Q. I understand you've been deposed many
23 times in the past; is that correct?

24 A. Several times. A lot, I guess.

25 Q. And having reviewed your publications and

1 all, it appears that you have been involved in
2 litigation other than in tobacco litigation; is that
3 correct?

4 A. That's correct.

5 Q. You are currently at the Harvard Law
6 School; is that right?

7 A. That's right.

8 Q. But you are, I think, by training an
9 economist; is that correct?

10 A. That's also right.

11 Q. You are not a lawyer?

12 A. No.

13 Q. What training do you have, if any, in
14 medicine?

15 A. Never taken any courses in medical
16 school. So I guess that would qualify as no specific
17 training.

18 Q. You have provided us through counsel some
19 information about your testimony in the Florida
20 case. And before we start that, let me ask you if
21 you've had an opportunity to review the actual
22 lawsuit that was filed by the State of Florida.

23 A. I don't think I've been provided that.

24 Q. Okay. When you were deposed in the
25 Mississippi case, I believe you had not been provided

1 a copy of the Mississippi lawsuit at that time; is
2 that also correct?

3 A. That's true.

4 Q. Have you in the meantime looked at the
5 Mississippi lawsuit?

6 A. No, because that case seems to be gone.

7 Q. When questions were asked of you in the
8 Mississippi lawsuit about the lawsuit itself, what
9 the lawsuit was claiming, and you had not had an
10 opportunity to read it, did that cause you to think
11 it may be appropriate to ask for or to read the
12 Florida lawsuit?

13 A. No.

14 Q. Do you have any interest at all what the
15 State of Florida lawsuit is about in terms of the
16 substantive allegations?

17 A. I'm sure I care somewhat about it
18 since -- if it's not about smoking, then there is no
19 reason for me to be here. So I'm taking the word of
20 the lawyers as to what it's about. I'm simply going
21 to go in and tell people about what I've done in
22 terms of my research and let them figure out how it
23 relates to the lawsuit.

24 Q. In regards to the risk perception work
25 that you have done in conjunction with whoever else

1 you've done it with, do you now understand that that
2 could have any relevance in a claim by the State of
3 Florida for payments for Medicaid expenditures? If
4 you do think it has even the remotest connection with
5 that, would you tell me what it is?

6 MR. ATKESON: Objection. Calls for a
7 legal conclusion.

8 BY MR. KERRIGAN:

9 Q. Okay. Subject to that -- and I'm not
10 asking you to express an opinion on legal relevancy;
11 I'm asking you to express an opinion on academic
12 integrity. What could your opinions on risk
13 perception have to do with the claims of the State of
14 Florida that it has expended funds through Medicaid
15 payments for people who have smoking-related illness
16 and disease? How could individuals' risk perception
17 have anything to do with that claim, if you know?

18 A. I don't know.

19 Q. Based on what I've just told you about
20 that claim, that that is a claim of the State of
21 Florida, and there may be other claims -- I'm dealing
22 just with that claim -- would you agree with me that
23 individual risk perception couldn't have anything to
24 do with it?

25 A. I don't use individual risk perception

1 information at all in my calculations, if that
2 addresses your question.

3 Q. You are just using semantics to dodge the
4 obvious question, are you not?

5 A. No.

6 MR. ATKESON: Objection, argumentative.
7 BY MR. KERRIGAN:

8 Q. Okay. I didn't mean to be argumentative,
9 but you said you don't use individual risk
10 perceptions. That's probably the single biggest
11 failing of your work in risk perception, isn't it?

12 A. I'm not sure what you are talking about.

13 Q. Why don't you tell me what you mean when
14 you say you don't deal with individual risk
15 perception. What did you mean by that?

16 A. I've analyzed by that, but when I
17 calculate the Medicaid costs into the other insurance
18 costs, the risk perception data do not enter in those
19 calculations.

20 Q. Let's just talk about risk perceptions,
21 not your work in lifetime costs. We have two
22 different areas that I understand you are going to
23 express an opinion in this litigation.

24 A. Okay.

25 Q. Are they commingled?

1 A. I don't mingle them.

2 Q. I don't either, but I wasn't sure of your
3 response. So risk perception as an independent
4 discussion that we are having now has nothing to do
5 with the State of Florida's claim for Medicaid
6 reimbursements?

7 MR. ATKESON: Objection.

8 Mischaracterizes his previous testimony.

9 A. I will go with that objection as well. I
10 think there are separable analytic issues the way I
11 pose the problem.

12 BY MR. KERRIGAN:

13 Q. Let's go back to your comment you don't
14 deal with individual risk perceptions. You said that
15 as it was relative to the lifetime cost analysis.
16 That's what you just said.

17 A. That's the only context in which I said
18 it because I do deal with individual risk perceptions
19 when I analyze risk perceptions. But when I
20 calculate the lifetime costs associated with
21 Medicaid, the individual risk perception data do not
22 affect those calculations.

23 Q. Good. So on individual risk perceptions
24 we are talking about an entirely different academic
25 area or area of discussion from the lifetime costs

1 analysis?

2 A. Risk perceptions pertain to whether
3 smokers themselves understand the risks, which is
4 different than whether their smoking activity
5 generates cost to other people.

6 Q. The answer to my question is yes, they
7 are two different areas?

8 A. Except to the extent that risk perception
9 affects how many people smoke, which in turn affects
10 Medicaid costs.

11 Q. We will deal with that in a minute.
12 That's very interesting. Do you want to rethink
13 that, or is that your testimony?

14 A. I've written that -- I've written the
15 risk perceptions affect smoking behavior.

16 Q. I didn't ask that. I asked if you wanted
17 to restate what you just stated. It's fine with me
18 if you want to stay with that.

19 A. I'll stick with that.

20 Q. Does smoking cause Grave's disease?

21 A. I don't know the list of all the things
22 smoking causes or what probabilistic associations
23 have been found for all the different diseases.

24 Q. I didn't ask about all the different
25 diseases.

1 A. I don't know.

2 Q. Do you even know what Grave's disease is?

3 A. No.

4 Q. Do you know what Berger's disease is?

5 A. No.

6 Q. Do you think smoking causes leukemia?

7 A. I don't know.

8 Q. Do you think smoking has anything to do
9 with peptic ulcers?

10 A. It may.

11 Q. In what respect?

12 A. To the extent that if people have some
13 sensitivity to tobacco or the chemicals in tobacco
14 and they swallow it in their saliva, it could affect
15 that.

16 Q. Do you think smoking has anything to do
17 with cancer of the cervix?

18 A. I don't know of a link.

19 Q. Do you think smoking has anything to do
20 with flat feet?

21 A. No.

22 Q. Have you done a regression analysis on
23 that question?

24 A. I don't have data on whether people have
25 flat feet.

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1 Q. You had it in the second survey.
 2 A. I have information whether people think
 3 that that's the case, but I don't have data on
 4 whether people have flat feet and whether they smoke
 5 and whether smoking causes flat feet.
 6 Q. Did you do a regression analysis on the
 7 question does smoking cause flat feet?
 8 A. No, I did a regression analysis on
 9 whether people perceive that smoking causes flat
 10 feet.
 11 Q. What did you find?
 12 A. Some people think it does.
 13 Q. What percentage of the people?
 14 A. I forget the percentage. It's small.
 15 Q. Did you find any significance from that?
 16 Did it tell you anything academically?
 17 A. I think a lot of people are willing to
 18 blame smoking for just about everything.
 19 Q. Do you think smoking causes mental
 20 illness?
 21 A. I don't know. I don't think it does.
 22 Q. Do you know why that question was deleted
 23 from the second Audits and Survey?
 24 A. I don't know why that it was -- I don't
 25 know that it was deleted.

1 thought about risk. And during the course of that
 2 work, I went through a lot of the material they had,
 3 not just the Audits and Survey data, but articles
 4 that they collected, since they too were interested
 5 in how people think about risk.
 6 To me the Audits and Survey data looked
 7 like a gold mine in terms of the information. It's a
 8 risk data set on an important question. People
 9 hadn't looked at smoking risk perceptions in any
 10 detail. So I asked if I could use the data set. And
 11 it took maybe a year or two for them to give me
 12 permission to use it, to look at the data.
 13 Q. You really had to kind of struggle to get
 14 this from the tobacco people through Jones, Day,
 15 according to you. They weren't ready to just give it
 16 to you; you had to keep asking for it.
 17 A. That's correct.
 18 Q. Where is all the information you claim
 19 they gave you that you reviewed? Where is that?
 20 That hasn't been disclosed to us.
 21 A. That was not in connection with this
 22 litigation.
 23 Q. Well, but it was a function of your
 24 involvement in this. So you now say because it's not
 25 involved with this litigation, you didn't produce

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1 Q. Did you remember having a discussion
 2 about it?
 3 A. I've never discussed that question.
 4 Q. Let me ask you this question,
 5 Dr. Viscusi, abstractly. I come to you and I have a
 6 specialized interest in something, and I bring you a
 7 data set. This data set produces something that's
 8 counter-intuitive; in other words, let's take it a
 9 step further. Something that is an absurdity, an
 10 intellectual absurdity. And I give it to you, and I
 11 say, "Dr. Viscusi, I would like to give you this data
 12 set, let you look at it. And if you like it, I want
 13 you to publish something about it." Would you do
 14 that?
 15 A. No, because nobody has ever told me to
 16 publish anything. I've never been in a situation
 17 where people come to me and say, "Here is the data.
 18 Go publish it."
 19 Q. Please explain to me what your
 20 relationship is with these tobacco people on the
 21 Audits and Survey. How did you get into that?
 22 A. I originally advised the tobacco people,
 23 as you call them, actually, Jones, Day, on risk
 24 perceptions. This was back in the '80s. And I told
 25 them what I knew about risk perceptions, how people

1 it.
 2 A. This was ten years ago. It was not
 3 litigation-related to any litigation.
 4 Q. How do you know that?
 5 MR. ATKESON: Objection, Counsel. We are
 6 now I think getting into a legal argument about what
 7 was appropriate in discovery. A discussion you and I
 8 should have and not --
 9 MR. KERRIGAN: I agree with that. Let's
 10 leave that and go to this question.
 11 BY MR. KERRIGAN:
 12 Q. How do you know what was relevant in the
 13 mid-1980s on litigation? Who told you what
 14 litigation was pending against these companies in 19
 15 -- in the mid-'80s?
 16 A. They did have some individual suits
 17 against them.
 18 Q. You are not answering my question. My
 19 question is, How did you know that? How did you know
 20 about their legal -- their litigation status?
 21 MR. ATKESON: If you knew.
 22 MR. KERRIGAN: I object, Counsel. That
 23 is assisting the witness in answering the question.
 24 That is a basis to have this witness's testimony
 25 stricken in Florida. I caution you, don't do that

1 again.
 2 MR. ATKESON: Counsel --
 3 MR. KERRIGAN: Don't do that again in
 4 Florida.
 5 MR. ATKESON: You're asking questions --
 6 MR. KERRIGAN: You can't do that in
 7 Florida.
 8 MR. ATKESON: Counsel, you and I can have
 9 a discussion here, okay?
 10 MR. KERRIGAN: We can, but don't tell the
 11 witness what to say.
 12 MR. ATKESON: You can wave your finger --
 13 MR. KERRIGAN: I'm not waving my finger.
 14 I'm just saying don't tell the witness what to say.
 15 That was a speaking objection. When you tell the
 16 witness --
 17 MR. ATKESON: Counsel, will you let me
 18 finish? You've said what you want to say several
 19 times. What I would like to say is that you are
 20 asking a question that assumes a fact, okay? My
 21 wording is the same as saying objection assumes a
 22 fact not in evidence.
 23 MR. KERRIGAN: I accept that.
 24 BY MR. KERRIGAN:
 25 Q. Dr. Viscusi, how is it that you know so

1 where I give you a data set, tell you to publish
 2 something, your response was no one tells me to
 3 publish something. I'm asking you overtly here,
 4 straight up: You did this to advance the interests
 5 of your clients, the tobacco companies, through
 6 Jones, Day, did you not?
 7 A. No. I was not even paid to write the
 8 stuff. At the time I wrote it, I wasn't even working
 9 for them.
 10 Q. Is this just coincidental that you are
 11 now involved in this litigation, do you think?
 12 A. I didn't know there would be this
 13 litigation.
 14 Q. You were paid by these tobacco companies
 15 always through Jones, Day; I understand that. In
 16 fact, you've never taken any checks directly from any
 17 tobacco manufacturers, have you?
 18 A. I did one morning of work reviewing a
 19 hazard warning label on the Premier cigarette, and
 20 I'm not sure where the check came from, but I've
 21 always made clear that was work directly for
 22 R.J. Reynolds.
 23 Q. In all other respects, you get checks
 24 from law firms, particularly Jones Day and
 25 Arnold & Porter; that's how are you get paid, is it

1 much about -- and that may be an unfair
 2 characterization. How is it you know anything about
 3 what these companies were facing in litigation in the
 4 mid-'80s? You were in academia.
 5 A. I read the paper.
 6 Q. You've reached the conclusion that you've
 7 testified to here under oath today by reading the
 8 paper in the mid-'80s?
 9 A. I could be aware of lawsuits by reading
 10 the lawsuit. The Cippolone case was active at that
 11 time. And I met with Jones, Day lawyers, and they
 12 apprised me that there was an active case. In fact,
 13 I reviewed six or seven volumes of Jeffrey Harris's
 14 depositions.
 15 Q. Why did you do that?
 16 A. There was an economist who testified for
 17 the plaintiffs, and they just wanted to give it to me
 18 as background to see what I thought of it.
 19 Q. What did you think of it?
 20 A. I didn't particularly like the kinds of
 21 things Jeffrey Harris said since he seemed to be
 22 dealing mostly from ideology rather than facts.
 23 Q. You deal in facts?
 24 A. That's my main stock in trade, yes.
 25 Q. Earlier I asked you about a hypothetical

1 not?
 2 A. That's correct.
 3 Q. You don't find that intellectually
 4 questionable?
 5 A. No, because if I'm working directly with
 6 lawyers from Jones, Day or Arnold & Porter and I've
 7 never even met the tobacco people, I would want to
 8 have the checks coming from the people I'm working
 9 for.
 10 Q. It's beyond just getting checks from
 11 these law firms, isn't it? You have a much more
 12 substantial involvement with these law firms, don't
 13 you?
 14 A. I'm not sure what you mean.
 15 Q. You've been working with them to try to
 16 tweak this Audits and Survey data to make it
 17 defensible, have you not?
 18 A. No. The data is out there. I'm not
 19 tweaking it.
 20 Q. You haven't communicated with
 21 Arnold & Porter in regards to this second Audits and
 22 Survey data?
 23 A. I communicated with them about some of
 24 the implications of the data, but I didn't tweak the
 25 data themselves.

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1 Q. Did you have anything to do with the
2 formation of any questions that were asked in either
3 survey?

4 A. No.

5 Q. Let's go back to my hypothetical. How
6 long do you think Jones, Day and Arnold & Porter
7 focused grouped up these series of questions to
8 fabricate, to just fabricate evidence to be used in
9 trial? How long do you think they worked on that to
10 come up with the Audits and Survey information that
11 they came up with?

12 MR. ATKESON: Objection. Argumentative
13 and assumes facts not in evidence.

14 BY MR. KERRIGAN:

15 Q. Let me restate the question. Do you
16 think that Jones, Day and
17 Arnold & Porter engaged in the Audits and Survey
18 work, particularly Jones, Day, to fabricate evidence
19 for litigation?

20 A. No.

21 Q. Do you think it was just a big,
22 intellectually honest endeavor?

23 A. I think it would have to be, and in my
24 case I did several sensitivity analyses, because if
25 it was not intellectually honest, somebody else would

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1 go out and run a survey and clobber them.

2 Q. Let me just ask you this: You've made
3 two statements there, which I've read that you've
4 stated before, so it wasn't like a new bit of
5 information. Do you really believe that what you
6 did -- I'm talking about intellectual honesty here --
7 was an appropriate sensitivity analysis about an
8 industry-produced survey? Do you think it was
9 appropriate, what you did?

10 A. Oh, sure. I think it's very appropriate,
11 what I did.

12 Q. Are you proud of that work?

13 A. Yes, and I think that it's highly
14 respected in the field.

15 Q. I will move to strike that because you
16 are not permitted, Doctor, to tell us what other
17 people think, because we will have other people
18 testify about your work and what you did and how you
19 reached the conclusions you did. Let me just get
20 right to --

21 MR. ATKESON: Let me object now. You
22 asked him was he proud of it. He said yes and he is
23 telling you why he is proud of it. He is allowed to
24 answer it. It should not be stricken. It was
25 responsive to the question.

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1 MR. KERRIGAN: I say stricken in this
2 sense. He is not permitted in Florida to bootstrap
3 his opinion by what other people think of it.

4 MR. ATKESON: Counsel, we don't need to
5 characterize things. People can read it and see what
6 they think of it. You asked him was he proud of it.
7 He said yes, and that was why.

8 BY MR. KERRIGAN:

9 Q. Has your '94 paper been published yet?

10 A. Which one is that?

11 Q. Do you have a paper dealing with smoking
12 published or prepared in 1994?

13 MR. ATKESON: Counsel, let me ask you.
14 Are we talking about risk perception or lifetime
15 methodology?

16 MR. KERRIGAN: I'm asking was there any
17 paper.

18 BY MR. KERRIGAN:

19 Q. I'm just asking, do you have a paper that
20 was written in 1994 that's not been published yet?

21 A. I know of no unpublished papers that I've
22 sent off to journals from 1994.

23 Q. I didn't ask that question. Do you have
24 any papers that haven't been published yet? You may
25 have said, "Well, I've elected not to publish the

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1 paper I wrote and I circulated but I haven't
2 published it."

3 A. About smoking.

4 Q. Um-hum.

5 A. None that I know of.

6 Q. How about 1995?

7 A. None that I know of from there either.

8 Q. Now, you talked about a sensitivity
9 analysis you did on the Audits and Survey. 1985, I
10 assume, you are talking about; is that right? The
11 1985 Audits and Survey?

12 A. Right.

13 Q. This sensitivity analysis that you did
14 was what?

15 A. Drafting alternative forms of the
16 question, which I would then administer -- actually a
17 person working through me would administer -- using a
18 telephone survey in the Durham, North Carolina, area.

19 Q. That's when you were at Duke?

20 A. That's correct.

21 Q. What was the volume of the respondents
22 involved, the number?

23 A. A couple hundred. I would have to look
24 it up. It's in my book.

25 Q. And it's your opinion that that -- what

1 other sensitivity analysis did you do?

2 A. We did some pretesting of questions, and
3 generally people thought in terms of the way they
4 thought about it, thinking in terms of cases out of a
5 hundred, an approach that they thought was meaningful
6 in the telephone interview.

7 Q. Now, wait just a second. Who thought
8 what was meaningful?

9 A. Respondents. In other words, when we
10 asked people questions, they would often respond in
11 terms of percents.

12 Q. You published this data?

13 A. Oxford University Press published it.

14 Q. 200 respondents?

15 A. Roughly.

16 Q. Any other sensitivity analysis?

17 A. None published.

18 Q. Dr. Viscusi, I've noticed in the
19 Mississippi deposition, and correct me if I'm wrong,
20 that you believe that because your work is published
21 and, according to you, peer-reviewed, that somehow
22 that raises it to the level of infallibility. Have I
23 misunderstood that?

24 A. Well, it's published and peer-reviewed in
25 the very best places. If I'm wrong, people will come

1 mail.

2 Q. Here is a paper that directly refuted
3 what you said.

4 A. No, it didn't directly refute it. He
5 asked a different question.

6 Q. Okay. The inference is a refutation of
7 what you did.

8 A. He disagrees with me, but that's not a
9 direct refutation.

10 Q. But in academia, wouldn't you write to
11 him and inquire of his methodology or have some
12 academic discussion? Here you have differences of
13 opinion. Wouldn't you normally do that?

14 A. I don't write to everybody who disagrees
15 with me. In my field I'm -- well, I'm sort of the
16 definitive target in some sense. If you are the king
17 of the hill, then people use you as the reference
18 point, so that he would not be the first person who
19 has ever disagreed with me.

20 Q. Which hill are you king of?

21 A. I do risk --

22 MR. ATKESON: Can we just take a quick --
23 I apologize.

24 (A break was taken.)

25 THE VIDEOGRAPHER: We are on the record.

1 after me in the literature in these same types of
2 journals. Nobody has come after me yet.

3 Q. Now that it's become highly relevant,
4 involving a lot of money, as opposed to an esoteric
5 issue, people are coming after you right now, are
6 they not?

7 A. Not that I know of.

8 Q. What papers do you know that have
9 recently been published that just completely refute
10 the conclusions that you've reached, if you know of
11 any papers?

12 A. I know of no papers that completely
13 refute it. I know of one paper that disagrees with
14 me, done by somebody out in California and published
15 in some health journal. They asked the question --
16 the risk perception question in a different way.

17 Q. You actually know a little bit more about
18 that author because the author sent you the paper?

19 A. Yes.

20 Q. And you've never answered him; isn't that
21 correct?

22 A. The author just sent me the paper. I get
23 lots of papers. I'm on a half a dozen editorial
24 boards. I get papers all the time. I don't write
25 letters to everybody who sends me something in the

1 BY MR. KERRIGAN:

2 Q. I think we left with the question, and
3 you were responding to it and the phone started to
4 ring. Which hill are you king of and who made you
5 king? Two questions.

6 A. I'm not sure who made me king, but by
7 that I meant that in the field of individual and
8 societal responses to risk and the economics of that,
9 my work generally in most of the areas I work in was
10 the first that was ever done and serves as the
11 reference point for people who want to enter the
12 field. So that other people writing in these topics
13 would use my work either as the definitive target or
14 what they follow.

15 Q. Well, the hill you are king of now is in
16 risk perception on smoking; is that correct or not
17 correct?

18 A. That's just one area I work in. My
19 general -- my big hill is risk and uncertainty. For
20 example, I'm the founding editor of the journal Risk
21 and Uncertainty. This is the kind of thing I do and
22 that I built my reputation on.

23 Q. Right now you are the person who is
24 espousing the theory that people overperceive risk
25 about smoking?

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1 A. That's certainly true.
2 Q. I don't want this to be argumentative,
3 which the very question may be. You don't consider
4 that an absurdity?
5 A. No.
6 Q. You don't consider it intellectually
7 nonsense?
8 A. No.
9 Q. And you don't consider that your
10 conclusions are based on evidence that has been
11 prepared for litigation by the law firm representing
12 the tobacco companies?
13 A. No. My conclusions are quite robust with
14 respect to reasonable specifications of a survey
15 question.
16 Q. And I'm going to get into the specifics
17 of really what you think, but let me see if I can
18 kind of give an overview. If the tobacco companies,
19 cigarette manufacturers, opened up their files, their
20 research files, their offshore research files, as
21 well as the limited research files they may have
22 here, if they opened up all these research files and
23 showed what they know about what their product does
24 in terms of illness and disease, that according to
25 you, that once they did all of that, people would

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1 actually think that smoking was less riskier than
2 they always thought before?
3 MR. ATKESON: Objection. Assumes a fact
4 not in evidence.
5 BY MR. KERRIGAN:
6 Q. I think that deals with the offshore
7 research. So let's just say opens up all of their
8 research files, tells the public everything they know
9 about what smoking does, what diseases it causes,
10 what illnesses it exacerbates. They tell the
11 public -- in other words, they come -- I call come
12 clean with everything they have got. Now according
13 to you, that actually is going to make people think
14 that smoking is less riskier?
15 A. I never said that. What I said is that
16 people already overestimate the risk. So to the
17 extent that it increases their risk perceptions, it
18 will make them more in error than they already are.
19 Q. How is that any different than what I
20 just said? Really, the logical conclusion is what
21 I'm asking you about. If the tobacco companies tell
22 all they know about their research, they come clean,
23 they open it all up, according to you, that
24 information in the marketplace will actually cause
25 people to have a lower risk perception than they had

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1 before that information came out?
2 MR. ATKESON: Objection, Counsel. That's
3 not what he said, and it mischaracterizes his
4 testimony.
5 BY MR. KERRIGAN:
6 Q. I'm asking.
7 A. That's not what I said.
8 Q. I want you to tell me the effect on risk
9 perception, according to the work that you've done
10 here now, if the tobacco companies say, okay, we are
11 publishing everything we've got, it's all coming out,
12 all of our research; how is that going to impact risk
13 perception?
14 MR. ATKESON: Objection. Incomplete
15 hypothetical. What are you assuming the research
16 says?
17 MR. KERRIGAN: Well, that the research
18 establishes illness, disease, death, carcinogenic
19 components of cigarettes; that it establishes a
20 horrendous -- a horrendous connection between
21 cigarette smoking and illness and disease. I want
22 you to assume that that would be established in the
23 marketplace. Okay? I understand it's a
24 hypothetical, Counsel.
25 MR. ATKESON: Let me just ask, I mean, in

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1 terms of completing the hypothetical, are you
2 assuming that the disease rates and death rates that
3 we observe today change in any way?
4 MR. KERRIGAN: I'm not assuming anything
5 about disease rates and death rates. That would be
6 totally irrelevant to the release of data. Data
7 being released will have no impact on disease and
8 death today if they publish studies. Do you agree
9 with that? If they published their research studies,
10 how is that going to affect the number of people ill
11 today or who are dead? How is that going to affect
12 it at all? It won't.
13 A. The body counts are the body counts. Is
14 that what you are saying?
15 BY MR. KERRIGAN:
16 Q. Yeah, an people who are diseased and ill
17 now are not going to be impacted by the release of
18 publications about causality; do you agree with that?
19 A. I'll agree with that.
20 Q. Okay. Now, I'm asking you to assume that
21 this is all published and it's all put out, all of
22 the information about smoking and its cause of
23 illness and disease. And I want you to assume that
24 it reveals substantial information on causality,
25 substantial information on causality. How is that

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1 going to affect risk perception in the marketplace?
 2 A. I think a lot depends on how it's
 3 characterized by the press, but we've had substantial
 4 information on causality for 30 years, at least. The
 5 Surgeon General's warnings have been on cigarette
 6 packs for over 30 years. And from the informational
 7 standpoint it's not clear that you are getting new
 8 information. That's not to say that depending on how
 9 the press characterizes it, it wouldn't have an
 10 effect. But in terms of what we are truly
 11 learning, I don't see where the release of their
 12 documents is going to add anything to what we would
 13 get through better statistical studies of body
 14 counts, linking body counts to smoking, et cetera,
 15 that the Surgeon General has undertaken.

16 Q. Is your statement it will have no effect
 17 on risk perception or it will have an effect? Either
 18 one I'm going to ask you further about it unless you
 19 say it has no effect.

20 A. Depends on how the press plays it out.

21 Q. Let's say the press plays it out to be
 22 the truth. The truth. They publish it. They just
 23 republish what the industry has. And this industry
 24 research shows causality in all kinds of illnesses
 25 and diseases. I'm asking you, How will that affect

1 does the new information that you are assuming would
 2 come out compare to the information that we currently
 3 have? I'm saying if you want to fill that in,
 4 great. If you don't, don't. But that's the
 5 objection I'm making.

6 MR. KERRIGAN: Okay. I accept that
 7 objection. So let's just start all over.

8 BY MR. KERRIGAN:

9 Q. What illnesses and disease do you think
 10 cigarette smoking causes? You personally.

11 A. Cause in a probabilistic sense? That's
 12 the way I --

13 Q. No, no. Cause. Causality. Cause.
 14 Proximate cause. Cause. I'm asking you what illness
 15 and disease does cigarettes cause. I'm not
 16 interested in terms of probabilistic because that was
 17 not in my question. If you are not able to answer
 18 the question on what illnesses and disease cigarettes
 19 cause without using the word "probabilistic," then
 20 you have to use it.

21 A. I have to pass because I cannot think of
 22 a single disease that cigarettes cause with
 23 probability of 1.0 in all people that smoke. That's
 24 what cause would mean unless you introduce
 25 probabilities.

1 risk perception?

2 MR. ATKESON: Counsel, I still believe
 3 it's an incomplete hypothetical. Are you assuming
 4 that the causality that it's showing is different
 5 than what we understand today?

6 MR. KERRIGAN: Well, Counsel --

7 MR. ATKESON: Because if it's not, then
 8 your question doesn't make any sense.

9 MR. KERRIGAN: Let's back up. It makes a
 10 lot of sense. This is what I call the half-baked
 11 approach here. Are you suggesting that causality has
 12 been established and you've been told to assume
 13 causality in your testimony? Because that's done --

14 MR. ATKESON: Counsel, this is a
 15 discussion you and I are having, not you and the
 16 witness, okay?

17 MR. KERRIGAN: Okay.

18 MR. ATKESON: I'm objecting to your
 19 hypothetical. I'm saying it's incomplete. I'm
 20 asking you if you want to fill it out in a way. If
 21 you don't, you don't have to. That's all.

22 MR. KERRIGAN: Let's go back to --

23 MR. ATKESON: You are asking him, does
 24 new information make a difference. I'm asking you in
 25 terms of saying something about that information, how

1 Q. Have you asked the cigarette companies to
 2 show you their causation research?

3 A. No.

4 Q. Wouldn't you want to see that?

5 A. Why?

6 Q. Because you are assuming that there is
 7 nothing in the published literature that shows
 8 causality 1.0. So if they have that data, then the
 9 public's perception would be changed, would it not?

10 A. We know based on smoking experiences that
 11 100 percent of all smokers do not die from cigarette
 12 smoking. We have detailed statistical studies that
 13 would tell me more than what they did with laboratory
 14 rats in Winston-Salem, North Carolina.

15 Q. You are now assuming that the research
 16 that the company has involves laboratory rats and
 17 therefore you are not interested in it. Is that what
 18 you are saying?

19 A. I'm saying the detailed statistical
 20 studies are done with publicly available data, and
 21 there has been lots of attention paid to that by
 22 government officials, by academic researchers. And
 23 from my standpoint, that would tell me more about the
 24 risk than what they would do with their smaller-scale
 25 case studies or laboratory rats or whatever it is

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1 they do.

2 Q. You said whatever it is they do. You
3 don't know what they do?

4 A. I don't know what they do.

5 Q. You don't know what they have done?

6 A. I don't know what they have done.

7 Q. And you've never asked for it?

8 A. Never.

9 Q. Because you think that the information
10 that's kind of out in the public from governmental
11 sources and all is sufficient?

12 A. I've always taken the Surgeon General's
13 risk assessments as the reference point. So my job
14 is not to challenge the medical evidence. I'm not a
15 doctor. My job is to analyze how people think about
16 risk given the most publicly accepted government
17 position on this, which is the view of the Surgeon
18 General.

19 Q. Let's just talk about risk perception in
20 a very basic way. Hypothetically let's assume that
21 the tobacco companies have research that establishes
22 the pathogenic cause of lung cancer, and it is
23 cigarette smoking. Let's say they have got that
24 research. Never been published. Never been told to
25 the public. Do you think that would affect the

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1 public's risk perception if that research was
2 revealed?

3 A. That doesn't sound like new news to me,
4 that cigarettes have some probabilistic effect on
5 lung cancer. So the question is whether that
6 information conveys a higher probability than people
7 already think. Right now we've got on average people
8 think it's a considerably higher probability of
9 getting lung cancer from cigarettes than the Surgeon
10 General estimates. Many, many, many times more than
11 the Surgeon General estimates. So if their evidence
12 is still well below what people think already, then
13 it's not going to increase risk perception.

14 Q. Maybe you didn't understand the question,
15 and I may have used a medical concept that you are
16 not familiar with. I want you to assume that like
17 asbestos causes asbestosis, cigarette smoking causes
18 lung cancer, and that the tobacco companies have
19 established it unequivocally. Not that it's a
20 probabilistic risk factor or any other such thing.
21 That it causes it, period, end of story. Do you
22 think that would affect the public's understanding of
23 the risk if the tobacco companies revealed research
24 that established causation of smoking and lung
25 cancer?

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1 A. Apart -- if you were going to extract
2 from probabilities, it's untrue. We know that
3 100 percent of all smokers do not get lung cancer. A
4 reasonable person should believe the probability is
5 not zero. In fact, most people believe the
6 probability of getting lung cancer is greater than
7 what the Surgeon General estimates. It's a
8 probabilistic causation relationship.

9 Q. You've given the same answer. I've asked
10 the same questions, and we are going nowhere with
11 this.

12 MR. ATKESON: Counsel, that kind of
13 characterization is not helpful. If you want to ask
14 a different question, that's fine, but telling the
15 witness we are going nowhere doesn't add anything to
16 the deposition here.

17 MR. KERRIGAN: I agree.

18 BY MR. KERRIGAN:

19 Q. Why won't you answer the question?

20 MR. ATKESON: Argumentative, Counsel.

21 MR. KERRIGAN: Wait just a second. Let
22 me state the question because maybe in truth he
23 honestly didn't understand it because I didn't say it
24 right.

25 MR. ATKESON: Maybe he answered it.

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1 MR. KERRIGAN: He has an answer he is
2 going to give regardless of the question, in my
3 opinion, but that's an aside we --

4 MR. ATKESON: Counsel, if we are going to
5 have this discussion, we might as well just go off
6 the record because we can do this all day.

7 MR. KERRIGAN: Okay.

8 BY MR. KERRIGAN:

9 Q. Are you trying to extract some medical
10 significance to the fact that every person who smokes
11 doesn't get lung cancer? Do you see some medical
12 significance to that?

13 A. Yes.

14 Q. Has the thought occurred to you that if
15 the public knew hypothetically that cigarette smoking
16 causes lung cancer, not as a risk factor,
17 probabilistic -- that it causes lung cancer, do you
18 think that knowledge would change the public's risk
19 perception?

20 A. If the probability of causing lung cancer
21 is 1.0, sure, it's going to change the risk
22 perceptions, but that's not true.

23 Q. You keep saying what's true and not
24 true. You are not an epidemiologist?

25 A. I can observe the fact that every smoker

1 does not die from lung cancer. We know that that's
2 not true.

3 Q. You've just answered a question I didn't
4 ask because I never said anything about dying from
5 lung cancer. So I want to go back to the question
6 that I asked. You said you know that every person
7 that smokes doesn't die from lung cancer.

8 A. Let me correct that to say every person
9 who smokes doesn't get lung cancer.

10 Q. Before they die?

11 A. Before they die.

12 Q. That doesn't deal with the question of
13 causation, however. If the public's risk perception
14 is affected by what they know, do you have an opinion
15 that if the cigarette manufacturers published
16 research data that showed that cigarette smoking
17 causes lung cancer, period, that they published that,
18 would that have -- this is a hypothetical question,
19 Counsel.

20 MR. ATKESON: Counsel, let me object on
21 this basis. The witness is trying to answer your
22 questions based on the way he defines cause. You
23 want to ask the question using a different definition
24 of cause. You emphasize the word cause in your
25 sentence, but when he answers it using his definition

1 of cause you say that's not what I wanted to get an
2 answer from. And I think it would be helpful here if
3 you when you say causes lung cancer, if you can tell
4 the witness what you mean by that, I suspect he will
5 be able to answer your question.

6 BY MR. KERRIGAN:

7 Q. Before we get to that -- and thank you
8 for that, Counsel -- you are not trained in
9 epidemiology?

10 A. No.

11 Q. You are not trained in medicine?

12 A. No.

13 Q. Some of the diseases that I talked about
14 this morning, you didn't even know what they were,
15 correct?

16 A. I've heard of them but I couldn't tell
17 you what they are.

18 Q. Okay. Do you think that the public has
19 an understanding of, however you want to use
20 causation, I don't care how you define it -- that
21 will be the easiest way to ask this -- do you think
22 the public has an understanding of the diseases that
23 you don't know anything about and their relationship
24 to smoking?

25 A. They know that smoking shortens life and

1 can cause death. How it could cause death, whether
2 they can enumerate every particular cause of death or
3 illness, I doubt if they could do it.

4 Q. Is that true? Smoking shortens life and
5 causes death?

6 A. That would be a reasonable, subjective
7 assessment given the evidence that's out there, that
8 smoking is risky.

9 Q. Smoking is what?

10 A. Risky.

11 Q. I thought we were talking about
12 causation. Why did you use the word risky?

13 A. It has a probabilistic effect on your
14 health and longevity.

15 Q. I thought earlier we were saying that
16 cigarette smoking shortens one's life and causes
17 illness and disease. Are you saying --

18 A. It shortens your expected lifetime, so it
19 decreases your probability of survival.

20 Q. And I asked you if that was true and you
21 said what?

22 A. A reasonable person would think that it's
23 true, given the evidence that's out there.

24 Q. Do you think that the cigarette
25 manufacturers can do anything that will help the

1 public understand the risk any better than they have
2 already done?

3 A. Right now the public overestimates the
4 risk associated with smoking. Anything they do to
5 help the public understand better would be to get
6 people to lower the risk perceptions. I don't think
7 the cigarette companies would be permitted to do
8 anything that would get people to lower their risk
9 perceptions.

10 Q. So you are saying that anything they do,
11 anything they do in terms of dissemination of public
12 information, is going to lower risk perception?

13 A. No, I didn't say that at all.

14 Q. Tell me something that they could do that
15 would raise risk perception.

16 A. There are lots of kinds of alarmist
17 information you could provide. You asked the
18 question could they do anything that could get people
19 to better understand the risk. We have a situation
20 now where people overestimate the risk. To better
21 understand the risk would be to lower people's risk
22 perception. I know, as an observer here, I think the
23 cigarette companies would not be permitted to do
24 anything that would get people to lower their risk
25 perceptions.

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1 Q. I think in the past -- let me just ask
2 you this question: If they opened up all of their
3 research data, published everything, you've
4 previously testified here today that in your opinion
5 it would have no effect on risk perception; is that
6 wrong? Have I misunderstood your answer?

7 MR. ATKESON: Objection.
8 Mischaracterizes his previous answer.
9 BY MR. KERRIGAN:

10 Q. Tell us what your answer -- let's say
11 they publish everything they have, all their research
12 data. And I want you to assume this hypothetical,
13 that they have offshore research data. That they
14 publish this research data on causality. Will it
15 have any effect on risk perception?

16 A. How risk perceptions are affected is
17 going to depend not so much on the data but how it is
18 portrayed in the press. For the same reason that
19 people don't form their scientific judgments by
20 reading Science Magazine and the New England Journal
21 of Medicine, I don't think many people are going to
22 go off to read these research files. They will wait
23 and see what the spin is in the press and see what
24 effect that has.

25 Q. When you were given this information from

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1 Jones, Day, did you think it was suspect? The Audits
2 and Survey information of 1985, did you think that
3 was a little suspect since they had done the work on
4 it as a law firm that had clients that had an
5 interest in the outcome? Did you kind of as a
6 academician think, you know, this might be a little
7 bit funny here, a little suspect?

8 A. I didn't think it was suspect. I did
9 want to show with my sensitivity tests that their
10 conclusions were robust with respect to what I
11 consider to be reasonable variations on the
12 questions.

13 Q. My question was, When it was initially
14 presented to you, as an academician, you didn't
15 think, you know, this is kind of odd that they have
16 got this survey data that a law firm has done for a
17 client? You didn't think that was a little unusual
18 to be releasing it to the academic community through
19 you?

20 A. No. In fact I had to fight them year
21 after year to get the data. So it was not like they
22 were trying to give me the data.

23 Q. Do you have letters that would support
24 the statement you just made here, that you tried for
25 years to get this data? Do you have some

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1 correspondence that supports that?

2 A. I don't know. I try to clean up my
3 office, and that's -- I got the data when I was at
4 Northwestern and analyzed it when I was at Duke.
5 I've had two moves since then. So I don't know how
6 many files I've retained from ten years ago. I think
7 it's unlikely that I have such letters.

8 Q. Do you think that Jones, Day -- I'm going
9 to use a lay term here -- cooked up the questions to
10 get the results they wanted?

11 A. I think if they did cook up the
12 questions, they knew they would get hammered in the
13 court when they presented it. So I think, if
14 anything, they would try to err on the side of
15 writing questions that would be defensible with an
16 impregnable lot of argument. Otherwise, they are
17 opening up a lot of argument, which they would get
18 nailed.

19 Q. Do you find it unusual that people of
20 academic respect have not embraced your work on
21 perceptions of smoking?

22 A. If you read the various quotations in the
23 back of the book and read the reviews I've gotten of
24 my work at Oxford University Press, Journal of
25 Political Economy, Review of Economics and

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1 Statistics, which are three of the leading outlets in
2 the field, you will find that these people have
3 embraced it.

4 Q. Well, I accept that as your answer. I
5 know you previously testified to that. I'm going to
6 ask you this question: These people that you claim
7 by this peer-review process, or whatever, who you
8 claim have embraced this study, your conclusions, did
9 you disclose to them the working papers and files of
10 Jones, Day in the creation of this Audits and Survey
11 data?

12 MR. ATKESON: Objection. Assumes facts
13 not in evidence. And also when you say it's his term
14 "embraced," actually it's your term "embraced."

15 MR. KERRIGAN: I accept that.
16 BY MR. KERRIGAN:

17 Q. You are not suggesting that the people
18 that have peer-reviewed your work have been fully
19 informed about the underlying structure of the Audits
20 and Survey data? You are not suggesting that, are
21 you?

22 A. I believe I include the Audits and Survey
23 questionnaire as an appendix in my smoking book. I
24 would have to check, but I would make it available to
25 anybody who wanted it.

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1 Q. Not the question that I asked but I
2 accept that answer to lead us towards a better
3 resolution of the question. Did you disclose to the
4 publishers and to the peer-review community the
5 working papers, the working papers of the Jones, Day
6 staff in the creation of the Audits and Survey data
7 of 1985? Did you give them that data?

8 MR. ATKESON: Objection. Assumes facts
9 not in evidence, that such documents exist.

10 A. I've never seen such working papers.

11 BY MR. KERRIGAN:

12 Q. You haven't?

13 A. No.

14 Q. Surely you asked for them.

15 A. No. I didn't know that they had any
16 working papers.

17 Q. You haven't asked. How would you know if
18 they did or didn't have them?

19 A. If I haven't asked, I wouldn't know.

20 Q. Right.

21 A. I didn't ask.

22 Q. But if you are pursuing something from an
23 intellectually honest perspective, Dr. Viscusi, truly
24 you would want to see the working papers that were
25 used to create this Audits and Survey questionnaire,

1 Jones, Day office in Cleveland. Here is their file
2 on information. The Audits and Survey information
3 was there. Jeffrey Harris's depositions were there.
4 I saw no other supporting documents, so I assumed
5 that there were no other supporting documents.

6 Q. But you didn't ask?

7 A. I wasn't -- at the time I didn't have the
8 data. There was no reason to ask.

9 Q. After you got the data and you looked at
10 it, did you then ask, say, "I would like to see how
11 you put this survey together? I would like to see
12 the working papers"?

13 A. No. But what I did instead is I designed
14 my own questions and tested my own questions before I
15 published the work using the Audits and Survey data.

16 Q. We've already dealt with what you've
17 called the sensitivity analysis, the 200 or so
18 telephone surveys at Duke. We've covered that,
19 haven't we? Is there some other sensitivity analysis
20 out there that we have not discussed?

21 MR. ATKESON: Counsel, you asked him what
22 he did when he got the data. He told you. Okay? I
23 mean, let's not try to imply here that he is not
24 answering your question. He is.

25 MR. KERRIGAN: I don't know what that

1 wouldn't you?

2 A. You are assuming that there are working
3 papers. It never dawned on me that there were
4 working papers.

5 Q. What if the working papers -- I want to
6 ask you to assume there are supporting documents for
7 this. Are you really -- are you really saying that
8 you don't think there is any file of information that
9 preceded this survey that would be relevant to your
10 inquiry?

11 A. I didn't see any file.

12 Q. My question was, You don't think there is
13 a file of information on how they put this thing
14 together?

15 MR. ATKESON: You asked him to assume
16 that there were documents.

17 MR. KERRIGAN: Another matter. We will
18 go back to that question, but I'm in the more
19 fundamental, the basic question.

20 BY MR. KERRIGAN:

21 Q. Are you suggesting that you don't think
22 that they have a file full of information on how they
23 put this Audits and Survey data together?

24 A. I assume that there were no such files
25 because essentially I was given here -- I was in the

1 objection is.

2 BY MR. KERRIGAN:

3 Q. You didn't do any other sensitivity
4 analysis? I want to make sure I understand that.

5 A. Not with smoking, but I've used risk
6 perception questions in other contexts.

7 Q. I understand that. You didn't do
8 anything else with this smoking data other than what
9 you did at Duke?

10 A. That's correct.

11 Q. Okay. We got that. Now, you say that
12 you didn't want to look -- maybe you didn't say
13 this. Did it strike your intellectual curiosity, How
14 did these lawyers put this thing together? And why
15 did they word these questions exactly this way?
16 Didn't, from an intellectual curiosity, didn't that
17 bother you? Weren't you interested in that?

18 A. No. I didn't think that there were many
19 areas of discretion. I talked to them about the
20 survey. We went through the various survey
21 components, and I had a pretty good understanding of
22 what questions were there and why. And it seemed to
23 me that asking the risk perception question in terms
24 of how many out of a group of 100 smokers would get
25 lung cancer was a way that people could think about

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1 that risk sensibly.

2 Q. When we leave this deposition today,
3 before you come to trial, would you ask them for all
4 of their work papers relative to the structuring of
5 this survey? Will you ask them, say, "I would like
6 to see this. I've been questioned about it, and I
7 want to see what you had. I want to see how you've
8 put these questions together. I want to see the
9 order. I want to see the focus group results. I
10 want to see everything you did before you did this
11 survey. I want to see it all." Will you ask them
12 for that?

13 A. I could see whether there is anything,
14 but I'm not clear that asking them those questions
15 would tell me more than simply doing my own survey
16 because I --

17 Q. The question is, Will you ask them for
18 that? Will you ask them to give you everything they
19 have on how they put this survey together, all the
20 working papers all the focus group results, all the
21 files that deal with how they put this Audits and
22 Survey of 1985 together? Will you ask them to show
23 you that and to look at every file and to read every
24 document?

25 A. I'm not sure it want to read every

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1 document. I mean, what information am I going to get
2 out of reading every document that they wrote? What
3 their intent is is not as important to me as whether
4 the questions themselves are good questions. The
5 current Audits and Survey survey essentially took my
6 questions, my wording, and incorporated it into a new
7 survey.

8 Q. We will get to that in a minute. But in
9 truth you did that with Arnold & Porter?

10 A. What are you talking about?

11 Q. The second Audits and Survey, the revised
12 questions were done in conjunction with Arnold &
13 Porter?

14 A. They did the survey but I was not
15 involved in it.

16 Q. You did it in conjunction with Arnold &
17 Porter?

18 A. I didn't do the survey.

19 Q. The questions.

20 A. I didn't do the questions. I had
21 questions that I ran at Duke. They used those as a
22 pattern for the kinds of questions that they
23 incorporated in the new survey.

24 Q. All right. Here we are in 1985. We have
25 this audits and survey information, 3,000 and

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1 something data points. Now we are moving on to a new
2 effort or an extension of that effort, are we not,
3 with the Audits and Survey, the second Audits and
4 Survey? We are moving from an extension of the
5 first, are we not?

6 A. That's correct.

7 Q. Now, at this point, does it strike you as
8 troublesome that now we have the law firm of Arnold &
9 Porter involved in the structuring of the questions
10 in the survey? Does that trouble you intellectually
11 that lawyers are doing things that will find their
12 way into evidence some day in a trial? Does that
13 bother you? Or did it bother you when it was first
14 presented to you, would be a better question, I
15 guess.

16 A. I don't know that it's lawyers writing
17 the questions. I don't know who wrote the questions.

18 Q. Did you ask?

19 A. No.

20 Q. Were you interested to know who is
21 actually doing this work?

22 A. I don't really care who does it. I care
23 about what the questions are and whether they are
24 good questions.

25 Q. Do you think that you are academically

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1 qualified to assess whether they are good questions
2 without seeing any of the working papers that were
3 used to develop these what you've called good
4 questions? You think you are academically qualified
5 to assess that?

6 A. Yes.

7 Q. How so?

8 A. I've been running surveys continuously
9 for the past decade for U.S. EPA. I'm in the field
10 now with a risk survey. This is what I do.

11 Q. Well, this is what you do. But what we
12 are talking about here is what they did, what Arnold
13 & Porter did and what Jones, Day did.

14 MR. ATKESON: Objection, Counsel. Your
15 question to him was, Are you academically qualified
16 to tell whether or not it's a good question.

17 MR. KERRIGAN: He said yes.

18 MR. ATKESON: He said yes.

19 MR. KERRIGAN: Okay.

20 MR. ATKESON: So if you are objecting to
21 his answer --

22 MR. KERRIGAN: I'm not objecting to his
23 answer at all. He said he was academically
24 qualified, but then he said because he has done so
25 much work. My question was very clear, Counsel. I

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Page 5

1 don't think there's any ambiguity. Anybody reading
2 this transcript I don't think would reach an
3 ambiguity about this. I said, but in this case the
4 work was done by Arnold & Porter and Jones Day. His
5 response was he has been conducting surveys for years
6 for people.

7 MR. ATKESON: You assume an ability to
8 tell what's a good question.

9 MR. KERRIGAN: That's okay. I understand
10 that. My question to him was, in this case you
11 didn't do the survey. That's the difference. The
12 lawyers did it.

13 A. The lawyers didn't do it. Audits and
14 Survey did the survey.

15 BY MR. KERRIGAN:

16 Q. I understand that. But the lawyers
17 created it, drafted it?

18 A. I'm not sure who drafted it.

19 Q. You didn't. We know that?

20 A. That's correct.

21 Q. Do you assume that somebody other than
22 the lawyers were directly involved in this? Other
23 than Jones, Day and Arnold & Porter, are you assuming
24 someone else got involved in this? And if so, who is
25 that person or agency?

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Page 6

1 A. Audits and Survey.

2 Q. Are you suggesting that they had revision
3 of the questions that were prepared by Arnold &
4 Porter and Jones, Day?

5 A. I assumed that what happened is that
6 Arnold & Porter took my questions from my book in
7 conjunction with the earlier survey, and asked them
8 simply to update the survey and flesh it out a bit.

9 Q. So your assumption is that there is no
10 intervening agency that changed the questions?

11 A. I don't really care that much about the
12 black box in the middle. I care about whether the
13 questions that surfaced in the survey and the survey
14 itself a good survey instrument.

15 Q. You've testified that you are able to
16 reach the conclusion that these questions were good
17 questions because of your work in other fields?

18 A. And my work with these questions that
19 they essentially used as the pattern for this survey.

20 Q. That's fair. Based on the sensitivity at
21 Duke with the 200 telephone calls and your other risk
22 perception work.

23 A. That's correct.

24 Q. That's fair. That encompasses it. It
25 bothers you not, apparently, what motivation Arnold &

1 meaningful.

2 Q. Do you think people who are academically
3 qualified to review this data would want to know the
4 motivations and conduct of people that were involved
5 in the drafting of the questions? Do you think that
6 the academically qualified people would be interested
7 in knowing that?

8 A. Who are we talking about?

9 Q. The people that peer-reviewed your work,
10 do you think they would want to know that?

11 MR. ATKESON: We are not talking back
12 about 1985?

13 BY MR. KERRIGAN:

14 Q. Whenever peer-reviewed work has been
15 done, whenever it was sent out there, do you think
16 they would want to know the motivation and the people
17 involved in the structuring of the questions? Do you
18 think they would want to have known that?

19 A. I think Jeffrey Harris might want to know
20 that, but I'm not sure whether other people wouldn't
21 simply look at the survey questions themselves and
22 judge them on their own merits, which is what they
23 should do.

24 Q. We are going to take a break in just a
25 minute because we've gone for a time.

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1 MR. ATKESON: Also we have a broken
2 chair.
3 MR. KERRIGAN: Oh, I'm sorry.
4 MR. ATKESON: No. It's just falling
5 apart here.
6 MR. KERRIGAN: Let's take a break right
7 now. It's been awhile, and it's uncomfortable being
8 in a chair that's breaking down.
9 THE VIDEOGRAPHER: We are off the
10 record.
11 (A break was taken.)
12 THE VIDEOGRAPHER: We are on the record.
13 You can go ahead and proceed.
14 BY MR. KERRIGAN:
15 Q. Dr. Viscusi, let's go to the warning,
16 although, as I understand it, you are not expressing
17 opinions in this case about the cigarette warnings,
18 or are you?
19 A. Not that I know of.
20 Q. But you've done in fact some very
21 advanced or sophisticated work in warnings, haven't
22 you?
23 A. Yes.
24 Q. I want to read you a statement, and I
25 want to ask you if you agree with this statement, and

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1 it comes from a former deposition you gave. I don't ,
2 play games, try not to, with the witness. When I
3 quote, I'm going to tell you where I got it.
4 A. Which product is it?
5 Q. It's just a statement, and that's what I
6 want to ask you about. You may be able to
7 differentiate it by product, and that's fine. Here's
8 what you said: "Well, I indicated that in general
9 it's the responsibility of a company that's aware of
10 a risk to make that risk known to subsequent users of
11 any product or any component to a product." You
12 agree with that?
13 A. In a case where the product itself would
14 not be viewed as risky but the component is, as in
15 the case of Teflon for a TMJ joint replacement, which
16 is I think where you are getting this.
17 Q. It is the Teflon case that you testified
18 in, but it's the components of the cigarette, it's
19 not the tobacco, it's not the loose-leaf tobacco,
20 it's the components in the cigarette that together
21 create the risk, isn't it?
22 A. The cigarettes are in my view risky based
23 on the evidence out there. I also view that people
24 should have perceptions regarding consumption of a
25 product. They are aware of the risks of the

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1 product. In fact, they overestimate the risk of the
2 products. Whether flavorings or additives or
3 particular ingredients pose risks, to me is not
4 consequential. What I care about is the total risk
5 of the product, and that's what's being covered by
6 the Surgeon General's warnings, and that's what
7 people have responded to in the surveys.
8 Q. You've referred three or four times in
9 this deposition to the Surgeon General's warnings.
10 A. U.S. Congress. Let me correct myself.
11 Q. What are the tobacco manufacturers'
12 warnings? We know what the Surgeon General's
13 warnings are because they are on the pack. What
14 exact warnings come from the tobacco manufacturers
15 that you know of?
16 A. In their ads, all these warnings are
17 repeated.
18 Q. You say warnings. I want to separate for
19 a moment the Surgeon General's warnings, okay. Are
20 you suggesting that the tobacco manufacturers, the
21 cigarette manufacturers, are publishing independent
22 warnings of those required by the Surgeon General?
23 A. No, they are including in the ads the
24 warnings mandated by Congress for their advertising
25 and for cigarette packaging and which Congress has

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1 decided are sufficient to convey to the public the
2 risk information.
3 Q. Well, that response I move to strike at
4 this time. It's not only unresponsive, it's
5 prejudicial and completely irrelevant to the
6 question. I just pose that for the record. I don't
7 want to get into an argument about it.
8 I'm back to the question, What have the
9 cigarette manufacturers done to warn the public,
10 independent of the Surgeon General's warnings, those
11 warnings that Congress has required? What else have
12 they done to warn the public about the risks of their
13 product?
14 A. I can't think of anything.
15 Q. Do you think it's the obligation of the
16 manufacturer to warn a consumer, or do you think it's
17 the obligation of the manufacturer to do whatever the
18 government requires and no more?
19 A. In this case the government has
20 essentially taken over the risk communication
21 responsibility by mandating warnings and concluding
22 that their mandated warnings do the trick. So this
23 is an unusual case where the government has assumed
24 responsibility. It's not unique. FDA reviews
25 warnings, and I view the situation there much the

1 same way.

2 Q. Is it your testimony today that the
3 cigarette manufacturers could not put on a cigarette
4 today a warning, "This product causes lung cancer,"
5 that they couldn't do that? That they are prevented
6 by law from doing that? Is that your opinion?

7 A. I think anything they did that got people
8 to have more accurate risk perceptions in a situation
9 where people already overestimate the risk, they
10 would be criticized for it, if not prevented from
11 doing it.

12 Q. My question was very limited. Cigarette
13 smoking causes lung cancer. I want to make sure that
14 your answer was responsive to that question. You
15 don't have to give another answer. If that answer
16 was responsive to that question, we will leave it.

17 A. I wouldn't want to put a warning on the
18 cigarettes that conveyed a certainty of lung cancer.
19 So I think the current I would not want to augment in
20 that manner.

21 Q. The statement that cigarette causes lung
22 cancer you think is not true?

23 A. I think that cigarettes do increase your
24 probability of getting lung cancer.

25 Q. Now --

1 A. How it's going to be processed --

2 MR. ATKESON: Let him answer.

3 A. -- by people is a different question
4 because lots of people, probably many people who read
5 the deposition, might think that A causes B means
6 that if you do A, B happens. But that's not true for
7 lung cancer. There is a probabilistic
8 relationship --

9 BY MR. KERRIGAN:

10 Q. Your testimony is that the manufacturers
11 have no responsibility to warn of the consequences of
12 the use of their product beyond the congressional
13 mandated warnings?

14 MR. ATKESON: Objection. Calls for a
15 legal conclusion.

16 BY MR. KERRIGAN:

17 Q. No moral responsibilities?

18 A. I'm not a priest.

19 Q. The question is, No more moral
20 responsibility?

21 A. From an economic standpoint, people
22 already overestimate the risk. Unless they have
23 information that indicates that the risk is greater
24 than people are estimating and would be indicated by
25 the Surgeon General's warnings, they have no

1 responsibility from an economic standpoint.

2 Q. You've answered the question from an
3 economic standpoint. I asked you if they had a moral
4 responsibility. Is that the answer?

5 A. I'm an economist. As I said, I'm not a
6 priest. I'm not here to give expert opinions on
7 morality.

8 Q. I'm talking generally, doesn't a
9 manufacturer have the duty --

10 A. That sounds legal to me.

11 Q. I know it does. I know it does.

12 A. I'm not a lawyer.

13 Q. But you've testified repeatedly about
14 duties of manufacturers, haven't you, in products
15 liabilities cases?

16 A. I never testify on legal issues. I'll
17 talk about what is appropriate from an economic
18 standpoint, but I never try and interpret what duty
19 to warn would be from a legal standpoint.

20 Q. All right. You had an option here --
21 looks to me as though you had an option -- to attempt
22 to replicate this Audits and Survey work that was
23 done in 1985. I see approximately 3,000 data
24 points. I don't know what the number is. It's close
25 to that is, it not?

1 A. Yes, it is.

2 Q. You had a chance or you had the option to
3 go out and replicate that with the same number of
4 data points. You could have done that, couldn't you?

5 A. I did this on my own. So I didn't have
6 funding for my replication. It was not -- none of my
7 work was funded by Jones, Day or by the cigarette
8 industry, either my own time or the time of my
9 research assistant. So I did not have the resources
10 to do anything broader than the replication.

11 Q. 30, 40 thousand dollars probably to
12 conduct a 3,000-data-point survey would be about
13 right, wouldn't it?

14 A. Depending on how long you got them on the
15 phone and who is in your sample.

16 Q. Could have been done, but you didn't have
17 the funds to do it?

18 A. That's right.

19 Q. I'm going to leave for the moment what I
20 call the risk perception kind of discussion that
21 we've been involved in and go to the work that you've
22 done. As I understand it, in Florida you are going
23 to testify that what you call the lifetime analysis
24 produces a net gain for the state; is that
25 essentially the testimony that you will be giving?

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1 A. That's true.

2 Q. And I've seen a table that you have
3 prepared that shows how much, pardon me, each state
4 is actually deriving in excess revenue because
5 cigarettes are causing illness and death; is that
6 what that table shows?

7 A. I have a table that summarizes all of the
8 cost implications for the states in various
9 categories. That's right.

10 Q. But you conclude that every single state
11 is, in essence, making money because people are dying
12 and becoming ill from cigarettes?

13 A. Cigarette smokers pay excise taxes as
14 well, which exceed the medical costs.

15 Q. We haven't gotten into the reasons for
16 that, but in fairness to you you have a right to give
17 all the reasons you reached that conclusion. I will
18 surely get to that. I was trying to deal with your
19 general conclusion that the states in fact are,
20 counting excise taxes, counting other things,
21 actually make money because people smoke cigarettes
22 and then they die early?

23 A. The whole cluster of things, everything
24 put together, yes, the states make money.

25 Q. Have you discussed this issue with any

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1 cigarette manufacturer executives?

2 A. No.

3 Q. Isn't the entire premise of your work the
4 causality of smoking in illness and disease?

5 A. Not the entire premise, but the effect of
6 smoking on disease and on premature mortality is a
7 component of the analysis.

8 Q. It concedes causality?

9 A. It assumes causality, yes.

10 Q. Have you discussed this with the
11 cigarette manufacturers?

12 A. No.

13 Q. Are you aware of their position in this
14 litigation denying causality?

15 A. No.

16 Q. Would you be surprised today to learn
17 that they are denying that cigarette smoking causes
18 illness and disease?

19 A. I denied that earlier depending on how
20 you worded the question. So I'm talking about a
21 probabilistic assessment that a reasonable person
22 would make based on the evidence. And in my case I'm
23 using actual data on what are the patterns of
24 expenditures of smokers, nonsmokers, who lives, who
25 dies. So I view my analysis as fairly meat and

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1 potatoes facts.

2 Q. My question to you is, Are you surprised
3 today, or whatever your response is, that I'm telling
4 you that in this litigation that tobacco
5 manufacturers are taking the position that cigarette
6 smoking does not cause illness and disease?

7 A. It has zero effect?

8 Q. Zero effect.

9 A. I may not -- I'm not sure I'm surprised
10 or not surprised, but that's not the view I
11 incorporated in my analysis.

12 Q. And your analysis, as we've said, may not
13 be the only premise but certainly a fundamental
14 premise is causality?

15 A. Yes.

16 Q. Have you shared with the cigarette
17 manufacturers through their lawyers this proposition
18 that fundamental to your opinion about lifetime costs
19 is causality?

20 A. I assume they have read my papers.
21 Somebody has read my papers or seen it in the media.
22 It's been out there, and they, I suspect, either
23 watch TV or read the newspapers or read magazines,
24 and it's been in all the media.

25 Q. You -- among other things we've been

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1 given a 1997, it looks to me like a draft article
2 that says something like "for circulation and peer
3 review, not for publication." Are you familiar with
4 that?

5 A. Yes.

6 Q. Is that a rewrite of an earlier article
7 that was not published?

8 A. No. I wrote that as a separate article.
9 I had no other article.

10 Q. And that's in the process of being
11 peer-reviewed now?

12 A. Yes.

13 Q. Tell me, if you will, how much of this
14 relies on the Manning work. How much of your paper
15 that you are going to publish incorporates any
16 findings from Manning?

17 A. I would call Manning a major building
18 block for all of my analyses.

19 Q. We are speaking of Wilbur Manning?

20 A. And Joe Newhouse and the rest of the Rand
21 Corporation study.

22 Q. Explain to me, if you would, how the
23 discount rate impacts your analysis.

24 A. A higher discount rate places a greater
25 weight on more immediate effects than a lower

1 discount rate. So the cost effects in the short term
2 have a higher weight with a high discount rate
3 relative to the cost effects in the long term.

4 Q. What is the debate, if there is a debate,
5 in the literature about these social costs and the
6 discount rate?

7 A. Well, the real rate of discount for the
8 United States has been in the vicinity of 1 to
9 3 percent over the past 15 years or so. The debate
10 in the literature is more of a theoretical debate as
11 to whether we should use an even lower discount rate
12 when worrying about public expenditures in order to
13 show a preference for the future generations. That's
14 the main debate.

15 Q. You want to give me that little tiny,
16 tiny debate that you implicitly refer to here when
17 you say that's the main debate? What's the little
18 debate?

19 A. That's the debate I'm aware of. There
20 may be debates concerning capital market
21 imperfections or something else, but treasury bills
22 are traded in a fairly competitive market. That's
23 the debate I see. I'm not aware of any debate in the
24 smoking literature.

25 Q. I'm not talking about the smoking

1 excessively protective of young people, you want to
2 use a lower rate than 3 percent, so we weight their
3 futures highly.

4 Q. We are not going to have an argument or
5 debate about it, okay? We are not going to do that.
6 That's your position. I want to make sure you
7 understand the question.

8 A. I don't understand what debate you are
9 referring to because I don't think you know.

10 Q. Okay. Well, you got to say that about me
11 and I get to say this about you. I don't think you
12 know it.

13 A. That's fine too.

14 MR. ATKESON: Let me interject here,
15 Counsel. If there is a debate that you would like to
16 find out whether he knows about, and if you can be
17 more specific as to what that debate is, he may know
18 it under a different term, or you and he may be
19 talking about the same thing using different words.
20 If there is some way you can characterize it, that
21 might be helpful.

22 BY MR. KERRIGAN:

23 Q. Fair enough. I'm going to give you a
24 number and ask if you've ever read it, seen it, heard
25 it discussed at the faculty lounge at Harvard, or any

1 literature. I said social cost consideration.
2 Surely you are aware of the debate that deals with
3 the discount rate and the variation of that rate, and
4 you must be aware of that debate relative to young
5 people, or maybe you are not, and if you are not,
6 that's okay.

7 A. I'm not sure what you are talking about.

8 Q. Are you aware of such a discussion?

9 A. I already referred to a debate. Are you
10 saying we should use a different discount rate for
11 young people?

12 Q. I'm just asking you if there is a debate
13 about that in the literature, that you can't use a
14 1 or 2 or 3 percent discount rate when you are
15 talking about alternative costs for children and for
16 youth, that there is a debate about that, that that's
17 just not something that people just agree with you
18 about.

19 A. I've never seen anybody disagree with me
20 on that.

21 Q. You haven't?

22 A. And I use a 3 percent rate. I've never
23 seen anybody say you should use a 1 percent rate.
24 Most people coming from the historical discount rate
25 literature would argue that if you want to be

1 other place, okay? And the discount number is 10
2 percent. Have you ever run into that number in any
3 of the literature, in your social discussions, in
4 your professional meetings with lawyers, read it in
5 economic journals? Have you ever talked about 10
6 percent?

7 A. Yes.

8 Q. Okay. How have you talked about it?

9 A. The government historically had mandated
10 it for benefit cost analyses. And everybody agrees
11 that it's too high. I don't know anybody who defends
12 that rate.

13 Q. Well, now, you just indicated to me then
14 a higher rate in which the government has taken a
15 position and you claim nobody agrees with that
16 position.

17 A. Everybody in the government disagrees
18 with it that I know. The Council of Economic
19 Advisers, Office of Management and Budget. I was in
20 the government. It's viewed as, to the extent that
21 people justify it, they believe that the agencies are
22 going to overestimate their benefits by so much, they
23 need a high discount rate to discipline them. And
24 historically we got that rate because the Department
25 of Defense initiated the rate because with a high

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1 discount rate, they get to recycle and replace their
2 weapons systems very frequently. So in part it's an
3 artifact that was adopted for political reasons to
4 maximize the budget for the Department of Defense.
5 I've written that, as you may know.

6 Q. Now we have what I would call the
7 debate.

8 A. No, this is not a debate. There is not a
9 debate because everybody agrees the rate is too
10 high. This is not a debate.

11 Q. Have you ever seen 10 percent published
12 anywhere else and discussed, other than from the
13 office of Management and Budget?

14 A. Since it's mandated for use in government
15 analyses, you are going to see it in some of those
16 as well. They now do a sensitivity analysis. In
17 fact, OMB now specifies you have to show other rates
18 other than 10 percent.

19 Q. I suppose that if we talked about 15 or
20 20 percent as a discount number, you wouldn't even --

21 A. It's preposterous. 10 percent is
22 preposterous.

23 Q. Do you think that the proposition that --
24 let me rephrase that question. Now, in your papers
25 you used a discount rate of 3 percent?

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1 A. I show zero, 3, and 5, and I report 3 as
2 the midpoint. It's on the high side, but I report
3 it.

4 Q. Because if you report 5, the government
5 is losing money? It's costing the government money,
6 even though people are dying and they're sick and
7 they're in hospitals, the government is still losing
8 money if you use a 5 percent discount rate?

9 A. I'm not sure that's the case. I would
10 have to look at the numbers.

11 Q. Well, why wouldn't you run that number?
12 Why didn't you?

13 A. I'm talking about all the states.

14 Q. All the states, Mississippi, Florida.
15 Why wouldn't you run the number?

16 A. I did run the number.

17 Q. 5 percent?

18 A. I've run zero, 3, and 5.

19 Q. What happens with 5 percent?

20 A. I would have to look at the paper, but
21 it's probably analogous to Mississippi. Whatever I
22 showed for Mississippi is probably fairly similar. I
23 think still the states make money because of the
24 excise taxes.

25 Q. What about 10 percent?

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1 A. I don't run ridiculously high discount
2 rates.

3 Q. Can you cite anywhere in the literature
4 where zero, 3, and 5 are supported as the three
5 discount rates that one would look at?

6 A. Since this is a sensitivity analysis, I
7 think there may be some discretion. Around the 1 to
8 3 percent range, people have written that the real
9 rate of return on capital in the United States is 1
10 to 3 percent. You can figure this out just by
11 looking at the spread between the treasury bill rate
12 and the inflation rate. You can't have a discount
13 rate that exceeds your real rate of interest. If
14 inflation is zero, your rate of interest is the
15 treasury bill rate. That's not 10 percent. Check
16 it.

17 Q. According to you, the government would
18 have to reassess this every time there was an
19 interest rate change. In other words, they would
20 have to do the calculation over again because it's
21 all going to be a function of the interest rate.

22 A. The long-run rate of interest and the
23 long-run rate of return has been fairly stable in the
24 1 to 3 percent rate range. So we're looking at the
25 average rate of discount or the real rate of return

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1 throughout the time period.

2 Q. What does Manning use?

3 A. He shows several discount rates, and he
4 shows a continuum, as I believe. He has a chart
5 where he shows how the costs vary with the discount
6 rate.

7 Q. It's your answer that he uses several
8 discount rates. Now I'm going to ask you, what are
9 they?

10 A. I'm not sure what his several are. I
11 know he has a chart that shows a continuum.

12 Q. Why didn't you use those rates in your
13 sensitivity analysis?

14 A. I know Manning's rate -- the rates
15 Manning places the greatest weight on are just too
16 high. They are above the real rate of return, like a
17 5 percent rate is in excess of the real rate of
18 return in the United States. He may have wanted to
19 use that rate for whatever reason. Maybe his funding
20 agency wanted that rate so cigarettes wouldn't be
21 portrayed in a favorable light. I don't know. I do
22 know his rate of five percent is too high.

23 Q. Are you saying that his work could have
24 been influenced based upon desired results by the
25 people who provided the funding?

1 A. What I'm saying is if their funding
2 agency practices focus on 5 percent, they might have
3 wanted to see estimates based on a 5 percent rate.
4 Or if they use a 10 percent rate, they may want to
5 see how those numbers play out at their 10 percent
6 rate. What I'm saying, from an economic standpoint,
7 when you are publishing in the literature, you want
8 to focus on what the economists think is the
9 appropriate rate, not what government bureaucrats
10 think is the appropriate rate. And this was a
11 government-funded study.

12 Q. Well, that was, I think, unresponsive to
13 my question.

14 A. I think it's quite responsive.

15 Q. Because the question I asked you, and the
16 reason I said it was unresponsive -- I'm going to
17 state the question again. And I was very precise in
18 this question, Dr. Viscusi. It was so precise that
19 if you want me to, I'll have the court reporter read
20 it back. But it was this: Are you saying that
21 Manning's work and the results that they reported was
22 influenced by the people who provided the funding?
23 Yes or no.

24 A. Yes, but not because they are trying to
25 promote a particular agenda. I don't know that

1 that's the case. But yes, it could be because that
2 agency may be used to using different rates of
3 discount. That's a different question. And he may
4 have wanted to show different rates of discount that
5 were more in line with what that agency used. That
6 could be a possibility. I don't know.

7 Q. Dr. Viscusi --

8 A. I don't know why he did it.

9 Q. Okay. And you are not able to report to
10 us today other than he used various rates, the rates
11 that he used? You are not able to do that?

12 A. I don't know what went through his head
13 other than what he has published.

14 Q. Well, what did he publish? What rates
15 did he use?

16 A. He published a chart with a continuum of
17 rates, and he placed greatest emphasis on a rate
18 higher than mine, which, as I've indicated, I don't
19 think is appropriate because my rate is more in line
20 with the real rate of return on capital. I don't
21 think any economist not -- I don't think many
22 economists would disagree with me. I'm not sure how
23 many on his study might agree with him. The
24 consensus in the literature is the real rate of
25 return in the United States is below 5 percent.

1 Q. Dr. Viscusi, when I've asked questions in
2 the course of this deposition, you have made
3 responses, I think, like you just did here. "I don't
4 know of any economist that would differ with me," and
5 things like that. Have you done any -- have you done
6 any polling of people in the field? I mean, do you
7 say that because of the certainty of your position or
8 because of some objective survey that you've done of
9 economists on these points?

10 A. I've read articles on the real rate of
11 return and what the real rate of return has been in
12 the United States, and those articles are independent
13 of the cigarette smoking debate. And the consensus
14 in that literature is 1 to 3 percent. I've written
15 an article -- I've written a study on productivity
16 that was issued by the Carter White House. The same
17 thing. The focal point of that was on the real rate
18 of return in the United States. It was in the 1 to 3
19 percent range. It's not 5 percent.

20 Q. I got to ask you the obvious question.
21 You didn't pick 3 percent because it backed into the
22 results that you were trying to achieve?

23 A. I didn't. I did zero, 3, and 5. I just
24 did it as a sensitivity analysis.

25 Q. But you didn't pick 3 percent -- that's

1 what you published in your paper. You didn't pick
2 3 percent to back into the results you were trying to
3 establish? You did not do that intellectually?

4 A. Right.

5 Q. 3 percent was your best effort to
6 determine an appropriate discount rate?

7 A. I would pick probably 1 to 2 percent, but
8 I picked 3 percent because it was intermediate in the
9 range I looked at. So the big article I published in
10 the NBER volume, I show zero, 3, and 5.

11 Q. And you picked 3?

12 A. I emphasized that from the point of
13 discussion, but that article publishes everything.
14 And I would be happy to put zero, 3, and 5 in this
15 paper except for conditions and situations of
16 lengths. My only concern was length. I would put
17 greatest emphasis on 3, but I have no reservations
18 about publishing zero, 3, and 5 other than length.

19 Q. In one of your papers -- and I can find
20 it. We are about to take a break here in just a
21 minute. You talk about social costs, and I want to
22 make sure I don't use an inappropriate term here.
23 And I noted in your Mississippi deposition your use
24 of the word social costs. What are you talking
25 about, social costs? What does that mean? Is that

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1 an economic term of art?

2 A. Social costs would be the costs to
3 society from a particular activity. The cost to
4 people other than the smokers. So you think of
5 private cost to the individual and social costs to
6 others.

7 Q. Social costs to others. What does that
8 mean?

9 A. I'm excluding private costs to the smoker
10 in my social cost tally.

11 Q. Let me just give you a quick hypothetical
12 and ask you where this fits into this conclusion that
13 the state actually profits from cigarette
14 smoking-caused illness and disease. If a 50-year-old
15 man dies of lung cancer, who is the wage earner in
16 his family, is that one of the -- the impact on his
17 family, is that a social cost? Is his loss of
18 earnings potential for his family an economic cost?
19 Is the companionship that his child loses a social
20 cost? How do those things come out of that fact
21 pattern? What's social and what's economic?

22 A. Economic costs and social costs aren't to
23 be used interchangeably. When I'm talking about
24 social costs in the article, I'm trying to
25 distinguish only the fact that I'm not going to look

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1 at private costs. I'm trying to look at the
2 nonprivate cost to the individual and the
3 individual's household. And these articles focused
4 on the insurance costs associated with smoking.

5 Q. So your conclusion about the net benefit
6 to the state is devoid of any consideration of what
7 I've just discussed with the loss of the earnings of
8 the person that dies, their familial relationships,
9 their contributions to society? All of those things
10 are ignored in your analysis, are they?

11 A. Well, the contribution to society only
12 insofar as it had tax or insurance repercussions. So
13 this is just a narrow insurance analysis, as opposed
14 to a broader benefit-cost study.

15 Q. You don't intend to conclude with this
16 lifetime cost analysis subjective things like the
17 state is better off economically in a global sense?
18 You are not trying to conclude that, are you? You
19 don't reach that conclusion?

20 A. I don't get into things like how
21 important the cigarette industry is to your state,
22 how important the sales of cigarettes are to your
23 convenience stores. I'm not doing a broad economic
24 analysis. I'm focusing on the insurance
25 ramifications. So I'm not counting these other

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1 economic effects.

2 Q. See, I asked the question and your
3 response dealt with implied benefits of the cigarette
4 industry. So you probably didn't understand my
5 question. It may have been a little ambiguous. I'm
6 talking about the enormous cost to the state
7 globally, cost to the state. Not the benefits that
8 you just referred to. I want to talk about the cost
9 to the state. Your analysis ignores that. You've
10 already pointed out it ignores some benefits that may
11 come from the convenience stores, but I'm asking
12 about the costs to the State of Florida. Your
13 analysis ignores these global cost impacts to the
14 state?

15 MR. ATKESON: Counsel, I'm going to
16 object. This is an ambiguous question. What costs
17 are you talking about?

18 MR. KERRIGAN: My hypothetical example.
19 You take the wage earner out of the household. You
20 take his production and contribution to society. You
21 take his earnings potential, his relationship with
22 his children and family, just as an example.

23 BY MR. KERRIGAN:

24 Q. Your analysis ignores that, doesn't it?
25 Is that right?

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1 MR. ATKESON: Okay, but your question was
2 costs to the State of Florida. You are saying that
3 the loss of companionship between a parent and child
4 is the state of Florida, or are you saying that's
5 something between the parent and child?

6 MR. KERRIGAN: Let's leave the loss to
7 the parent and child. Let's leave the destruction of
8 the family out of this. Counsel suggested that maybe
9 if we put that in there, it could cause you a
10 problem.

11 MR. ATKESON: I'm not saying that would
12 cause a problem at all. I'm asking you to clarify
13 the question, and I would prefer you not characterize
14 it in that way.

15 MR. KERRIGAN: Okay. Then I
16 mischaracterized it, and I apologize to counsel for
17 that.

18 BY MR. KERRIGAN:

19 Q. You are taking a myopic approach that
20 isolates three or four factors to determine that the
21 State of Florida is economically benefiting by the
22 cigarette manufacturers causing illness and premature
23 death; is that true or not true?

24 MR. ATKESON: Argumentative, Counsel.

25 MR. KERRIGAN: No, again, Counsel, I

1 really don't think that's argumentative. I said, you
2 are taking a myopic approach that looks at two or
3 three issues. If it's not myopic, maybe it's --

4 MR. ATKESON: Counsel, it's not myopic
5 compared to the state's view of this that you are
6 only looking at one cost. He is looking at many more
7 things than the state is. For you to characterize
8 this as myopic is unfair, and it doesn't relate to
9 the witness's testimony. We don't need to engage in
10 this.

11 MR. KERRIGAN: Let me withdraw myopic.
12 He may have made a reasonable -- I say it's a
13 reasonable objection because it's an argumentative
14 question, perhaps.

15 BY MR. KERRIGAN:

16 Q. You don't intend to conclude by this,
17 Dr. Viscusi, this basic conclusion: that the State
18 of Florida as an entity that exists, comprised of the
19 citizens of the state and the government of the State
20 of Florida, you are not suggesting that the State of
21 Florida is better off economically because cigarette
22 smoking is engaged in by the people of the State of
23 Florida?

24 MR. ATKESON: Counsel, again, I have to
25 object.

1 MR. KERRIGAN: Okay.

2 MR. ATKESON: Okay. If you were
3 including in the State of Florida saying that the
4 State of Florida is basically a middleman for all the
5 citizens of the State of Florida, the witness has
6 already testified he has not included private costs
7 in here. He said that. If you are asking something
8 different than that, I guess I ask you to clarify
9 it. But with regard to private costs, obviously
10 individuals decide to smoke for whatever reasons.
11 They get some benefit of that; there is some cost to
12 that. The witness, we will stipulate he has not
13 included any of that in his analysis. If you were
14 saying, does your analysis include something or
15 should it -- does it not include something other than
16 private costs, I wish you would clarify that because
17 otherwise we have a very ambiguous question here.

18 MR. KERRIGAN: Probably good time to take
19 a break.

20 THE VIDEOGRAPHER: We are off the
21 record.

22 (A break was taken.)

23 THE VIDEOGRAPHER: We are on the record.
24 This is the beginning of Tape No. 2.

25 BY MR. KERRIGAN:

1 Q. Dr. Viscusi, continuing on with the
2 deposition this morning, what is your hourly normal
3 billing rate or billing rate that you are billing to
4 the law firms here in this litigation?

5 A. For litigation-related work, \$500 an
6 hour.

7 Q. What is testimony-type time? Is it more
8 or is it the same?

9 A. Same.

10 Q. Do you know Dr. Rubin?

11 A. Paul Rubin?

12 Q. I think it's Donald R. Rubin from
13 Harvard, in statistics.

14 A. No.

15 Q. Are you familiar with what any other
16 experts that have been hired by the defendants are
17 being paid?

18 A. No.

19 Q. In your table that I've reviewed showing
20 the costs for Florida and the costs for these other
21 states, let me read you these numbers and see if they
22 sound correct to you. 33.9 in Florida -- and I don't
23 expect you to have this by memory, but I'm reading
24 from your chart, okay? 33.9 is the tax per pack in
25 Florida. Does that sound right?

1 A. That's my table.

2 Q. That's your table. And then I have .026
3 Medicaid care.

4 A. Medical care.

5 Q. Medical care. What does that mean? What
6 does that number mean?

7 A. The increase in medical costs for the
8 State of Florida are .026 cents per pack or 2.6 cents
9 per pack.

10 Q. About two and a half cents a pack is the
11 medical care cost to the State of Florida?

12 A. That's correct.

13 Q. Going across the table, we have a deduct
14 number of 4 cents for nursing homes. What does that
15 mean?

16 A. Using the but-for analysis of tracking
17 smokers compared to nonsmokers, the nursing home
18 costs of smokers are roughly 4 cents a pack less than
19 nonsmokers.

20 Q. Where did you get that data?

21 A. The building block was my article
22 published in the NBER volume, which I then modified
23 for the State of Florida, taking into account the
24 particular state-specific nursing home utilization
25 rate, the nursing home costs in the State of Florida,

1 and other factors.

2 Q. So the source of this number is your own
3 work?

4 A. Everything goes back to the other
5 article, which in turn goes back to Manning as an
6 input to that as well.

7 Q. Okay. I didn't mean to suggest that this
8 number was a function of your prior work. Your prior
9 work is also a function of the materials incorporated
10 therein, obviously. But this
11 number, .04, comes from you and the work that
12 you've done?

13 A. Yes.

14 Q. Okay. As it may rely on Manning or
15 others as reflected by your article?

16 A. That's correct.

17 Q. Minus 7 cents, 7 1/2 cents a pack for
18 pensions, what does that mean?

19 A. The state pensions costs are reduced by
20 roughly 7 cents a pack because people smoke as
21 opposed to nonsmokers. Smokers save the state that
22 money.

23 Q. That is clearly a death number?

24 A. I don't call anything a death number.

25 It's a number that arises because smokers don't live

1 there.

2 BY MR. KERRIGAN:

3 Q. 7 cents is the deducting number for
4 nursing homes. And again, the premise is that people
5 in nursing homes who have smoked will not live as
6 long?

7 A. Or they don't enter nursing homes at all
8 maybe because they are already dead.

9 Q. And deducting 5.2 cents for pensions is
10 State of Florida retirement?

11 A. Yes.

12 Q. And that number comes from what?

13 A. My analysis.

14 Q. Your analysis?

15 A. My analysis.

16 MR. ATKESON: Counsel, let me just --
17 maybe you can help us here. It is my understanding
18 that the state employees in Florida are not a part of
19 the case. The only issue in the case is the medical
20 care that the state is paying for; is that correct?
21 And not the medical care of state employees?

22 MR. ATKESON: I'm very unhappy that you
23 did that, but yes, that's right. Let me go on to the
24 questions with the witness.

25 MR. ATKESON: Counsel, I'm just trying to

1 as long as nonsmokers. They contribute to the
2 pension plans but tend not to collect with the same
3 frequency.

4 Q. And the pension plans you are referring
5 to are what? State of Florida retirement?

6 A. For state employees.

7 Q. For state employees.

8 MR. ATKESON: Let me just pose an
9 objection here.

10 MR. KERRIGAN: Sure.

11 MR. ATKESON: Counsel, this doesn't
12 change, I think, the substance but you are asking
13 about the wrong numbers.

14 MR. KERRIGAN: It's .052 instead of .074.

15 MR. ATKESON: Right. And the nursing
16 home numbers is .075 and not .044.

17 MR. KERRIGAN: Indeed. Both those
18 corrections. .075 is the nursing home number. But
19 you have no independent ability here to give us that
20 number. I was reading from your chart. So it really
21 is --

22 MR. ATKESON: I wasn't objecting. I just
23 want to get the right numbers on the record.

24 MR. KERRIGAN: Sure. I think that's

25 absolutely right and I'm sorry I had the wrong column

1 clear up --

2 MR. KERRIGAN: I know, but I understand
3 what you did, and I am very upset about that. I'm
4 very upset. I'm going to move now for the record
5 that this witness's testimony should be stricken
6 based on counsel's advising the witness how to
7 respond to this answer.

8 MR. ATKESON: Counsel, I have not done
9 that at all.

10 MR. KERRIGAN: I think you have. I'm
11 very straightforward about this. I think that's
12 exactly what you did.

13 MR. ATKESON: Counsel, I'm being very
14 straightforward about this as well. There is no
15 intention to do that. I'm trying to clear up what
16 the case is about.

17 MR. KERRIGAN: I don't think you are
18 trying to clear up anything. That's unfair to have
19 this argument on the record.

20 BY MR. KERRIGAN:

21 Q. Dr. Viscusi, you have deducted .052 for
22 pensions. You've just indicated it was for the State
23 of Florida pensions. Why did you do that?

24 A. That's a cost implication for the State
25 of Florida. That's what the purpose of the article

1 is, to analyze the cost implications for the states.
2 Q. And you think that's germane and relevant
3 to this lawsuit?
4 A. This article was not prepared for any
5 lawsuit.
6 Q. .016 taxes on earnings. What does that
7 mean?
8 A. Because of smokers' premature expected
9 mortality, they will not contribute to these various
10 state pension plans and social -- you know, the
11 Social Security, Medicare, those programs. So I only
12 count the state-specific costs in this component.
13 Q. Where does that number come from?
14 A. My analysis.
15 Q. And you conclude for Florida that the
16 state is benefiting -- correct me if I'm wrong about
17 this -- 8 cents for every pack of cigarettes sold?
18 A. I believe that excludes excise taxes.
19 That's just the direct insurance, Medicaid, pension,
20 sick-leave costs. You have the main column heads
21 there, but the components are actually more
22 comprehensive.
23 Q. I was going to ask you how you got to
24 that number from these columns, and you can't.
25 A. You can't because there are more columns

1 for example, 80-something cents --
2 MR. KERRIGAN: It's off of my particular
3 chart here. You can show him that Washington
4 number.
5 MR. ATKESON: The chart shows 81 1/2
6 cents.
7 A. Okay.
8 BY MR. KERRIGAN:
9 Q. The State of Washington has taxed
10 cigarettes two and a half times about what Florida
11 taxes cigarettes at, roughly. How much does the
12 State of Washington make for every pack of cigarettes
13 sold, according to your analysis?
14 A. It makes both the excise tax of 81 1/2
15 cents a pack plus another 8 -- it's either .066
16 or .086. This is a fax. So 8-6 or 6-6. Either one.
17 Q. It's 6 or 7, 8 cents a pack; is that
18 right?
19 A. 7 to 9 cents a pack. It's hard to read
20 this fax. Let's call it 7 cents to error on the side
21 of conservatism. So they make 88.5 cents a pack in
22 terms of the costs.
23 Q. So that I understand the chart
24 thoroughly, you have gross excise taxes-plus for
25 Florida, 8 cents a pack for every pack sold?

1 out there.
2 Q. After you incorporate the rest of the
3 columns, you come up with Florida making 8 cents for
4 every pack of cigarettes sold in the State of
5 Florida?
6 A. That's correct. .079, I think it is.
7 Q. This happens to be .080, but it could
8 have been rounded in the table. We don't know?
9 A. Right, right.
10 Q. Let me just go down to look at the state,
11 for example. Looking at this chart, I can't reach
12 any conclusion about any other state because I don't
13 have all of the columns; is that correct? You would
14 have to have all the columns to understand on any
15 other state how you got to the number you got to?
16 A. You have the bottom line -- you don't
17 have all the columns for any state other than
18 Mississippi in the paper.
19 Q. Right.
20 A. So Mississippi is the only one.
21 Q. And you don't have Florida's?
22 A. I have Florida's. I just -- it's not in
23 the article. The article was not about Florida.
24 Q. If we took another state that has a very
25 high tax on cigarettes, say, the State of Washington,

1 A. Yes.
2 Q. And I believe when you did the
3 calculations for every state, you concluded that in
4 every state, regardless of the medical care costs,
5 nursing home costs, pension costs, or taxes on
6 earnings, every state is making money, according to
7 your analysis, irrespective of excise tax, selling
8 cigarettes?
9 A. Yes.
10 Q. Beyond this analysis, the charts and
11 whatever we have here, does that sound absurd to you?
12 A. No.
13 Q. Just intellectually does it sound absurd?
14 A. No.
15 Q. Do you think this is an accurate -- I
16 think you have distinguished private costs not being
17 considered; is that right?
18 A. That's correct.
19 Q. And define private costs, if you would,
20 so I know what's not in it.
21 A. Losses to the smoker, the smoker's
22 household. So it would include, for example, the
23 health effects on the smoker, loss of consortium,
24 whatever the effects would be on the smoker and the
25 smoker's household. This is really focusing

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1 primarily on insurance costs.

2 Q. I just want to expand private costs, what
3 it's not including. Would private costs include the
4 contribution that, say, the senior lawyer in a law
5 firm would make to the productivity of that law firm
6 with an early demise? Does it consider that?

7 A. No, but you would want to be consider the
8 net private costs. So if you left the law firm and
9 somebody else replaced you, you would want to know
10 maybe if he did exactly the same job, was there a net
11 cost. Maybe there was no net cost. You would want
12 to know the net cost.

13 Q. Okay. But it doesn't take into
14 consideration the effect of the death of the human
15 being would have on society, in his work, in his
16 church or synagogue, or in his private life?

17 A. Only to the extent that it shows up in
18 these financial things. That's correct.

19 Q. The taxes on earnings, is this add-back
20 number supposed to reflect the discontinued
21 contribution that the deceased would not be making
22 because of not earning an income? Is that what that
23 means?

24 A. Yes, but I did not include income taxes.

25 Q. And these costs that you've put down here

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1 are unique to the state because these are the state
2 cigarette smoking externalities? That's the term?

3 A. That's correct.

4 Q. Okay. Have you also concluded that the
5 federal government somehow benefits by cigarette-
6 caused illness and disease, economically benefits?

7 A. Yes.

8 Q. And that is what benefit? Do you have a
9 per pack number for the federal government?

10 A. I think -- I'm not sure what I put in
11 this article, whether it was total society or federal
12 government. It's just social costs, but it's quite
13 large because they get the lion's share of the Social
14 Security benefit. So I guess I don't -- I know the
15 federal government answered, but I didn't put it in
16 the paper. I did the whole society for comparability
17 with my other paper.

18 Q. Do you know whether -- you know who Ken
19 Warner is, don't you?

20 A. I've never met him, but I know who he is.

21 Q. And I think he has published some in this
22 field, has he not?

23 A. Primarily in public health journals, I
24 believe.

25 Q. What is that supposed to mean? Does that

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1 demean his academic credentials in some way? Why do
2 you say that?

3 A. He is publishing in a different area. I
4 publish in economics journals. He publishes in
5 public health journals. I publish in economic areas.

6 Q. Is one better than the other?

7 A. It's a different discipline.

8 Q. But academically they are equivalent?

9 A. I'm not going to get into a relative
10 status argument. If you are an economist, it's
11 better to publish in economics journals. It's more
12 prestigious. It's harder to do. The standards are
13 more demanding. That's all.

14 Q. Who makes that pronouncement that you
15 just made? Who else shares that view besides you?

16 A. You can look at citation rates. I have
17 social science citation index ratings in all the top
18 140 journals, and I'll be happy to give them to you,
19 in terms of which of the cited journals of economics.

20 Q. Did you know a lot about public policy
21 when you were 25 years old? A lot.

22 A. I'm not sure what a lot is.

23 Q. Did you have a depth of knowledge about
24 public policy?

25 MR. KERRIGAN: Let's take a break for a

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1 second.

2 (A break was taken.)

3 THE VIDEOGRAPHER: We are on the record
4 BY MR. KERRIGAN:

5 Q. My question was, When you were 25 years
6 old, fresh out of Harvard, did you know a lot about
7 public policy?

8 A. I don't know what that even means. I
9 mean --

10 Q. What does public policy mean to you?

11 A. I did a master's degree in public policy,
12 but what does it mean to know a lot? Did I know as
13 much as Richard Neustat? No. There are senior
14 people I didn't know as much about --

15 Q. I guess my question was, when you
16 graduated from undergraduate school at Harvard -- by
17 the way, you've gotten all your degrees at Harvard,
18 haven't you?

19 A. Yes.

20 Q. When you got your undergraduate degree at
21 Harvard, did you know a lot about public policy?

22 MR. ATKESON: Okay. So now we are asking
23 different than 25.

24 MR. KERRIGAN: He has a made a
25 differentiation in his response, something about a

1 master's degree.

2 BY MR. KERRIGAN:

3 Q. So let me ask you the question: How old
4 were you when you graduated from Harvard
5 undergraduate school?

6 A. 21.

7 Q. Okay. When you were 21, did you know a
8 lot about public policy?

9 A. I read the paper. I knew a lot about the
10 Bureau of Reclamation, which is one agency within the
11 Department of Interior, but I'm not sure that gives
12 me a breadth of knowledge.

13 Q. Did you have a degree of confidence in
14 your knowledge regarding public policy when you were
15 21 years old, after you graduated from Harvard?

16 A. I think there is a whole continuum. I
17 knew something about public policy. I was not
18 generally ignorant, but I didn't know as much then as
19 I know now.

20 Q. Do I understand that the Audits and
21 Survey work that's been recently done has been
22 published or not published?

23 A. Not published.

24 Q. Did you have any problem with the
25 question, any concern about the question in the 1985

1 you are going to get lung cancer? Yes or no? Is
2 that such a shockingly bad question to ask? Why
3 wouldn't you ask it?

4 A. Let's say the lung cancer probability
5 is .1, and you go out and ask the survey question,
6 "Do you think you will get lung cancer," and
7 everybody says no, because the probability is
8 below .5 for everybody. I don't think that tells you
9 as much as asking where below .5 your probability is

10 Q. Well, now, Dr. Viscusi, when you are
11 taking these surveys, people don't understand
12 probabilities. They are just answering the questions
13 that are asked, right?

14 A. That's not true. The purpose of the
15 question is to get people thinking in a way that gets
16 them to understand the probabilities, and that's what
17 this one in a hundred or X in a hundred question
18 does.

19 Q. You are not telling the people about
20 probabilities. You are simply asking the question to
21 obtain a response from them that gives you accurate
22 data in which you can make certain predictions.
23 That's why you are doing this, right?

24 A. These are probabilistic questions about
25 probabilities. The question you posed is not a

1 survey: Among 100 cigarette smokers, how many of
2 them do you think will get lung cancer because they
3 smoke? Did that cause you any concern the way that
4 question was phrased?

5 A. No. I've changed the question.

6 Q. Did you do that just for fun, or did you
7 do it because the earlier question presented a
8 problem?

9 A. I did it so that I would address not
10 simply getting lung cancer but also lung cancer
11 mortality risks, total mortality risks, life
12 expectancy effects. So I wanted a more -- richer set
13 of risk measures than were picked up in that
14 question.

15 Q. Did it trouble you that the question
16 asked about others and not about the respondent?

17 A. Unless you can clone yourself 100 times,
18 I think it's hard to ask 100 how much -- how many out
19 100 people exactly like you would get cancer. That's
20 not as easy a question for people to relate to as 100
21 smokers.

22 Q. I will agree with you that's an absurd
23 question. Let me state my question again and not ask
24 for the absurd question being asked. What's wrong
25 with asking somebody, if they smoke: Do you think

1 probability question. So it loses much more of the
2 information that I can capture with a more refined
3 question such as this.

4 Q. As an economist now, this deposition
5 transcribed, circulated to your peers, you are
6 telling us today that this question in this survey
7 was more refined than the question I just asked?
8 Better question?

9 A. Much better question.

10 Q. Would you ever include any questions
11 about what the individual thought about themselves
12 when dealing with their risk perception, or is that
13 just ridiculous to think you would do that?

14 A. I've done that in a workers survey that
15 was a written survey, where I gave them a linear
16 probability scale to mark the probability. But in a
17 telephone survey, this is the analog of that.

18 Q. You've done just exactly what I just
19 said. You used the questions that I just said. You
20 dealt with the individual's perception of the risk to
21 themselves?

22 A. Yes.

23 Q. What I'm asking you is wouldn't that be
24 an appropriate thing to do if you are trying to
25 understand someone's true risk perception, is what

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1 they think would happen to them if they smoked, not
2 what they think is going to happen to somebody else
3 if they smoke. Wouldn't you agree that's the best
4 way to determine their risk perception?

5 A. I have no reason to believe that this
6 question as worded doesn't get at the same thing.

7 Q. My question to you was, isn't it a better
8 way to do it the way I just did it, a most logical
9 way to do it?

10 A. Not in a telephone survey it's not
11 better.

12 Q. What exactly is it that goes on over the
13 telephone that makes that not possible?

14 A. You are not going to present somebody
15 with a linear risk scale and ask him to mark on the
16 scale what the probability is. So you can't run a
17 little probability training course. And you can
18 accomplish the same thing by asking him with respect
19 to a reference population of 100 and that
20 shortcircuits the need to do that. People can think
21 very easily in terms of percentages and odds out of
22 hundred.

23 Q. You didn't think it was a little suspect
24 that all the questions that preceded this question
25 among the 100 cigarette smokers, "How many of them do

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1 you think will get lung cancer because they smoke,"
2 you didn't think that was kind of a set-up question
3 based on the previous questions in the survey? I
4 mean, you are setting up a response, is what I'm
5 suggesting, intentionally skewing the survey results
6 is exactly what I'm suggesting happened.

7 A. I ran the survey without anything
8 preceding it, and it didn't affect -- my results were
9 very comparable, as you know. So I don't think it
10 did skew the results.

11 Q. Well, as you keep adding these asides, I
12 have to respond. You say "as I know." I do not know
13 any such thing. That is your testimony. I accept it
14 as your testimony, but it is not what I know or what
15 I believe, okay? What do you think --

16 MR. ATKESON: Counsel, Counsel, let me
17 just stop. What the witness said there is as you
18 know about what he has written. He is not commenting
19 on your beliefs. He is saying you know how he asked
20 his survey because he details it in his book. Now,
21 if you haven't read that, then you are right, you
22 don't know it, but he is not commenting on your
23 knowledge. He is saying what you know about him.

24 MR. KERRIGAN: That was very unclear from
25 his response. So I wanted to make sure that the

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1 record reflects it's not what I know, what I believe,
2 or what I understand. What he has written in a book
3 that he's published that he cites as authority for
4 his testimony is fine. I'm just saying when he makes
5 comments like "as you know," there is a suggestion we
6 are all in this intellectual agreement arena, which
7 we're not there.

8 MR. ATKESON: He wasn't doing that and no
9 need to take umbrage at it, and we can go on.

10 MR. KERRIGAN: Good.

11 BY MR. KERRIGAN:

12 Q. Do you think there is any basic logic to
13 the idea, especially with young people, that other
14 people might get sick from smoking, but it's not
15 going to happen to me? You think there is some of
16 that out there?

17 A. I've heard people claim that that's the
18 case. Some antismoking advocates would say that's
19 the case.

20 Q. Dr. Viscusi, if people disagree with you,
21 do you label them antismoking advocates just because
22 they disagree with you?

23 A. These people aren't disagreeing with me.
24 They are writing their own view. I'm just saying
25 these are the kinds of things they might say.

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1 Q. I'm asking you if intellectually honest
2 people might conclude, in just a conversation, others
3 are more likely to get sick from smoking than me?

4 A. If that's -- well, I don't know about the
5 relative probabilities, but if it's true that people
6 really don't think it's going to happen to
7 themselves, then these probabilities would not affect
8 smoking rates. And my research documents the fact
9 that these risk perceptions that people have actually
10 do affect whether they smoke.

11 Q. I understand your conclusion. We are
12 going to get to that in a minute. Your "which causes
13 which" conclusion. You say the risk perception is
14 what causes them to smoke. That's one of your views,
15 is it not?

16 A. People with lower risk perceptions are
17 more likely to smoke.

18 Q. Again, citing your own work for the
19 authority on that?

20 A. Yes.

21 Q. Dr. Viscusi, I noticed in this 1997 paper
22 that there are many footnotes and parenthetical
23 references to your work to support the 1997 paper.
24 Is that something that you do normally in your
25 publications? Bootstrap your current work by

1 referencing your former work?

2 A. If I'm the only person who has worked on
3 a topic and has published the leading things on a
4 topic, I would certainly do that. And to the extent
5 I'm building on my past work, of course I would do
6 it.

7 Q. I have no question about building on your
8 past work, but citing previous work as authority for
9 an affirmative statement in a paper, is that
10 something that you normally do?

11 A. If it's the best evidence out there, I'll
12 cite it. If it's not the best evidence, the journal
13 reviewers will tell me that.

14 Q. Back to the journal reviewers. Your
15 position is that if you get it published, there is an
16 affirmation of its intellectual integrity?

17 A. No, that's the first screen. Then it
18 sits out there in the literature.

19 Q. Do you have any idea if the tobacco
20 interests might have some input to the publishers?
21 Do you know that?

22 A. I know they have no input to these
23 publishers.

24 Q. How do you know that?

25 A. Journal of Political Economy is run by

1 the University of Chicago and the University of
2 Chicago Press. These are -- Review of Economics and
3 Statistics is run by the Harvard University
4 Department of Economics. They would not take -- I
5 know -- it's just preposterous to think that they
6 would discuss whether they'd publish my article with
7 the tobacco industry.

8 Q. Preposterous to think that?

9 A. Yeah. These are independent academic
10 journals, the most prestigious journals in
11 economics. They are independent journals.

12 Q. Okay. So you believe that the
13 publication of the material that you have published
14 somehow bootstraps its reliability -- not
15 bootstraps -- somehow is reinforced in its
16 scientific validity, if you will, because of this
17 peer-review process and editorial review. You've
18 said that repeatedly. Am I paraphrasing it
19 correctly?

20 A. It's certainly better to publish than not
21 to publish. There is no question about that.

22 Q. Do you know how Duke University got its
23 name?

24 A. James B. Duke.

25 Q. Do you know what his nickname was?

1 A. No.

2 Q. Do you know what he did for a living?

3 A. He was a tobacco baron.

4 Q. Do you know how the university's
5 endowments were created?

6 A. He gave them money many, many years ago.

7 Q. Do you think tobacco has attempted to
8 influence academia by grants?

9 A. I don't know what they are doing. They
10 have not made any grants to academia that I'm aware
11 of, you know, to me.

12 Q. Do you know that the tobacco industry
13 makes awards and grants to various universities for
14 research and other works?

15 A. I know they have endowments of various
16 kinds. So they used to endow professorships that
17 would have nothing to do with tobacco, or endow a
18 lecture hall.

19 Q. Do you think that when this industry
20 gives money to academia, it has no interest in
21 influencing the output of academia in any respect?

22 A. Yes, I think it's just goodwill. If you
23 endow the R.J. Reynolds professorship at the Duke
24 business school, I believe the person who holds that
25 has nothing whatsoever to do with cigarettes in their

1 research.

2 Q. I'm not saying they are not sophisticated
3 in this respect. What I am asking you is, do you
4 believe that the money that's given by the tobacco
5 industry to academia is given without any intent to
6 influence the output from the academic community? I
7 you believe that, that's fine.

8 A. I don't know what their interest is, but
9 I know that Duke University would not accept money in
10 order to influence the work of its faculty, to
11 promote the interests of any industry.

12 Q. I just asked you if when they make a
13 grant, do you think that they have any interest in
14 trying to influence the output of that very subtly,
15 very subtly?

16 A. I don't know what their thinking is.

17 Q. Why did you pick North Carolina to do
18 this sensitivity analysis of 200 phone calls? Why
19 did you do that in North Carolina?

20 A. That's where I lived.

21 Q. That wasn't my question.

22 A. I was paying for it myself.

23 Q. That could be the whole reason.

24 A. That's where I lived, and I was paying
25 for it myself, and it's not a long-distance call.

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1 Q. So the long-distance phone charges were a
2 factor?

3 A. I was just doing a robustness test, and I
4 thought, if anything, North Carolina would be a
5 situation where if there is a bias relative to other
6 states, people would underestimate the risk, relative
7 to, let's say, Massachusetts.

8 Q. Underestimate the risks because they live
9 in North Carolina?

10 A. Right.

11 Q. And they underestimate those risks why
12 because they live in North Carolina?

13 A. Well, in Durham, you don't get tobacco
14 farmers. But if you happen to get a tobacco farmer
15 you are calling, you might get a different answer
16 than if you are calling an antismoking advocate in
17 Boston. So it's a different mix of people. And
18 North Carolina is a leading tobacco- producing state.

19 Q. So the people in North Carolina, the 200
20 people that you called, had the same risk perceptions
21 as the Audits and Survey of '85?

22 A. Similar for lung cancer risk perceptions,
23 and then I extended it to mortality risk assessments
24 and life expectancy loss, which was not included.

25 Q. Did you ask the tobacco people, the

1 because it was in the postwarnings era for
2 cigarettes, and they already had legal immunity.

3 Q. Why did you keep writing to them and
4 asking them for the data?

5 A. I wanted to analyze it as a researcher.

6 And I didn't want to have to pay for a survey
7 myself. This is a survey that was free.

8 Q. And you -- the thought didn't enter your
9 mind that if you put this information out in a
10 publication and could get it peer-reviewed, that you
11 might be a very valuable witness to the tobacco
12 industry? That never crossed your mind?

13 A. No, because I thought they had legal
14 immunity from risk perception issues.

15 Q. Why do you think that -- I'm going to say
16 Jones, Day picked the question about lung cancer?
17 Whoever actually picked it, why do you think they
18 wanted the question asked about lung cancer unless it
19 was calculated to achieve an overassessment of risk?
20 Why do you think they picked lung cancer?

21 A. Lung cancer was the first major risk
22 category identified in the 1964, or so, HEW report on
23 lung cancer, so it had been a prominent risk
24 associated with cigarettes, and I believe the main
25 reason they picked it is that this survey was

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1 Jones, Day or Arnold & Porter, to let you use an 800
2 number?

3 A. I had nothing to do with them at that
4 time. I had nothing to do with them for many
5 years -- I think years before then, and I didn't
6 want any funding for my work. I didn't seek any
7 funding. I just wanted to do it independently.

8 Q. You had been receiving checks of some
9 kind or another from this industry for a decade,
10 haven't you?

11 A. Well, it's over a decade since I did any
12 work for them, but I did not have a continuing
13 working relation with them, and I had no anticipation
14 that I would work with them again.

15 Q. My question was, For over a decade you've
16 received money from the tobacco industry through
17 their lawyers?

18 A. I'm getting paid now. I got some money
19 in the 1980s, but that's not the same thing as being
20 continuously receiving money for a decade.

21 Q. When you picked up on this Audits and
22 Survey business for publication, did you suspect you
23 might be a person in high demand to be hired by the
24 tobacco people?

25 A. I didn't think my work was relevant

1 undertaken in connection with the Cippolone case,
2 which dealt with lung cancer. So they wanted to just
3 have an assessment that was case-specific.

4 Q. It wasn't introduced in Cippolone?

5 A. This is why I was told why they did the
6 survey. I don't know where it was introduced, but
7 this is the information I was given that they asked
8 about lung cancer because it pertained to lung cancer
9 litigation.

10 Q. And you don't think it was because there
11 was so much literature, so much public discussion
12 about lung cancer, that they picked it intentionally
13 to try to skew the risk perception numbers up? You
14 don't think that's why they did that?

15 A. No, I think they picked it because it fit
16 the litigation. As I pointed out, that you do get
17 greater overestimation of risk with lung cancer than
18 with total mortality risk.

19 Q. Let's ask this question. Let's ask the
20 question: From 100 smokers how many of them will get
21 Berger's disease from cigarette smoking? Would you
22 care to opine on what the answer might be?

23 A. Hamburger's disease? See, I don't think
24 that means anything to people.

25 Q. You misunderstood what I said.

1 A. No, I didn't misunderstand it. If you
2 ask people on the phone, they might.
3 Q. Dr. Viscusi, just a second. I understand
4 you don't know the medicine. It's not hamburger's
5 disease; it's Berger's disease.
6 A. I heard Berger's disease.
7 Q. Berger's disease.
8 A. I heard it. Excuse me. But if you are
9 asking people on the telephone, they are not going to
10 know what Berger's disease is either, and they are
11 going to click into something they do know, which is
12 like hamburger's disease. In other words, you don't
13 ask people in a survey question medical terminology
14 that they don't understand. Period.
15 Q. Dr. Viscusi, maybe I'm just too thick to
16 understand this. How can you understand risk if you
17 don't even understand the disease? How could you
18 assess risk on Berger's disease?
19 A. I'm not trying to assess risk for
20 Berger's disease.
21 Q. Well, if you are trying to understand the
22 public's perception of risk from cigarette smoking
23 and there is epidemiological evidence that Berger's
24 disease comes from cigarette smoking, why wouldn't
25 you ask that as a test question in this survey?

1 A. I'm not interested in the specific
2 diseases. I'm interested in the overall mortality
3 risk perception. And being dead is a severe enough
4 outcome so that if people think there is a very high
5 probability they are going to be killed by smoking, I
6 can be reasonably confident that they think there are
7 adverse health consequences associated with smoking.
8 Q. Well, then, why in the world didn't they
9 ask that very question?
10 A. What question?
11 Q. What you just said. How many people are
12 going to die from lung cancer? That would be the
13 bell ringer. Why didn't they ask it?
14 A. I did.
15 Q. Why didn't they ask it in '85? Why did
16 they word this question this way when you just gave
17 the obvious question to be asked? Why did they word
18 it this way?
19 A. Get lung cancer as opposed to die from
20 lung cancer?
21 Q. You are the one that brought up dying as
22 the risk we want people to understand. This question
23 doesn't ask about dying. It says people are going to
24 get lung cancer.
25 A. To get lung cancer wording versus the die

1 from lung cancer wording is not a big difference.
2 Getting lung cancer versus dying from all causes of
3 mortality is a big difference. They asked the lung
4 cancer specific question because I was told that this
5 survey related to lung cancer litigation.
6 Q. You took a publication, a survey that
7 lawyers did, according to you, in conjunction with
8 litigation. You knew that's why it was done. Did
9 you think that might be suspect?
10 A. I thought, if anything, they would err on
11 the side of having an unassailable survey instrument
12 because they knew it would be involved in litigation,
13 and they knew people would be after them.
14 Q. Did you ask questions like why in the
15 world didn't you go to a prestigious independent
16 entity, pose the basic information that you wanted
17 pursued, that is, true risk perception, give them all
18 the data that you had, and ask somebody to do it
19 independently? Did you ask them why they wouldn't
20 approach it that way as opposed to phrasing the
21 questions the way they phrased them?
22 A. I didn't ask that question.
23 Q. Have you read Dr. Schoenbaum's work, his
24 paper? I think you referred to it earlier, but you
25 didn't mention it by name, University of California.

1 A. I've only had a chance to thumb through
2 it. I haven't had a chance to read it thoroughly.
3 So I don't remember his risk perception question. I
4 know it was not my question. Something about maybe
5 survival rates until age 75 or something.
6 Q. Before I leave the risk perception, I
7 don't know how I got back to this because I wanted to
8 take about your lifetime earnings, but the risk
9 perception honestly is interesting to me. Do you
10 think that children 16 and 17 years old have a
11 greater risk perception than appropriate for
12 cigarette smoking-caused illness and disease?
13 A. Children -- age 16- to 19-year-olds,
14 based on the survey evidence, have a higher risk
15 assessment than do the older age groups, and it's
16 considerably higher than any government assessments
17 of the risk.
18 Q. In laymen's terms, the 16- and
19 17-year-olds, they overestimate the risks to
20 themselves of smoking cigarettes, overestimate it?
21 A. I don't know about 16- or 17-year-olds.
22 I know that 16- to 19-year-olds --
23 Q. Let's take that group. That's fair. 16-
24 to 19-year-olds. They overestimate the risk to
25 themselves from cigarette smoking, according to you?

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1 A. For the lung cancer risk assessment,
2 that's the only group for which I've broken out that
3 age group.
4 Q. So you've never tested anything but lung
5 cancer?
6 A. For that age group.
7 Q. For that age group. Let's just stay with
8 lung cancer. You are saying that 16- to 19-year-olds
9 overestimate the risk of lung cancer --
10 A. Yes.
11 Q. -- to themselves. Why didn't you go and
12 break out that group to really test the cognitive
13 dissonance kind of component here? Why didn't you
14 check that? Why didn't you do it for the more
15 expanded survey?
16 A. Well, I did. The way they get a
17 cognitive dissonance with those type of effects from
18 an economic standpoint is to see whether these risk
19 beliefs on the part of 16- to 19-year-olds are just
20 is powerful in influencing their smoking probability
21 as risk beliefs are for older age groups. And my
22 statistical analysis shows you can't reject the
23 hypothesis that 16- to 19-year-olds are affected in
24 the same way by their risk beliefs as older people
25 are by theirs. So they are just as powerful. And if

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1 there were cognitive dissonance, they would not have
2 this effect.
3 Q. When I say to you as a layperson, 16-
4 17-, 18- 19-year-olds think they are bulletproof and
5 nothing bad is going to happen to them, it's going to
6 happen to the other guy, you would say that's not
7 true about smoking and lung cancer?
8 A. I think it's not true generally. I think
9 a lot of research has shown that a lot of the myths
10 concerning that age group are just that. They are
11 myths.
12 Q. What's the myth?
13 A. The myth of adolescent invulnerability.
14 Adolescents do not view themselves as invulnerable.
15 Q. As a group?
16 A. As a group.
17 Q. So when you tell a PTA group or something
18 that don't worry, 16-, 17-, 18-, 19-year-olds, they
19 don't think they are invulnerable, they don't think
20 they are bulletproof, we've got a lot of scientific
21 evidence that shows that they -- if anything,
22 cigarette smoking, they overestimate the risk --
23 that's what you would tell people?
24 A. I think generally that age group has been
25 given a worse wrap than they deserve.

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1 Q. Do you know anything about the medicine
2 and injuries that occur to young people in that age
3 group?
4 A. I track accident statistics, if that's
5 what you mean.
6 Q. Do you know anything about head and neck
7 injuries to people in that group, motorcycle
8 accidents, diving accidents?
9 A. Drunk driving?
10 Q. Drunk driving accidents.
11 A. I've seen some statistics, published
12 statistics.
13 Q. And --
14 A. There are some risks in that group. Also
15 they do engage in types of activities where they
16 might be exposed to greater risk as well.
17 Q. We've gone over this several times, but
18 I'm still struggling with it. If you are trying to
19 assess a person's understanding of risk, you don't
20 think it's appropriate to ask questions related to 20
21 different illnesses and diseases that the
22 epidemiology says is causally related to cigarette
23 smoking, you don't think that's necessary or
24 appropriate?
25 A. Exactly.

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1 Q. And you don't think that because the risk
2 perception on lung cancer is higher than the actual
3 risk?
4 MR. ATKESON: Objection; mischaracterizes
5 his previous testimony.
6 BY MR. KERRIGAN:
7 Q. Okay. Let's straighten that out, then.
8 How am I wrong about that?
9 A. Let's take the total mortality risk and
10 the life expectancy loss associated with mortality.
11 If people believe that the mortality risk from
12 cigarette smoking is high, and if they also believe
13 the length of life they are going to lose if they die
14 is also high, then that risk perception alone will
15 create a very strong disincentive not to smoke in
16 terms of having the full effect of the risks.
17 Q. I'm not sure I understand that, so I'll
18 ask the question again. You may have been very
19 responsive to it and I just didn't understand it. If
20 you listed 180 diseases that are caused or
21 exacerbated by cigarette smoking, many of which lead
22 to painful and agonizing death, and that information
23 is published by the manufacturer -- I want you to
24 assume they just publish that information -- and it's
25 disseminated widely in the media, it will have no

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1 impact on risk assessment by the populace. Is that
2 your testimony?

3 A. I didn't say that in the previous
4 answer. What I said is if you are trying to measure
5 whether people's risk perceptions are accurate,
6 provided that I'm asking about sufficiently severe
7 expected health effects that are at least as severe
8 as the expected health effects that you would
9 construct using your scientific evidence with
10 detailed questions, as long as people believe the
11 expected health cost to them is as least as great as
12 what a scientific study would say using this whole
13 list of diseases, then I've done all I need to do to
14 show that people think that the expected health costs
15 to them are at least as great as they actually are,
16 based on the science.

17 Q. Now I would like to give you the
18 opportunity which I think you wanted to have -- I
19 hope you have -- and that is to tell us everybody in
20 the field that would subscribe to what you just
21 said. Just name the people who have published in the
22 field that would subscribe to what you just said
23 here.

24 A. I don't think anybody would -- I don't
25 care what anybody would do. I know if I give people

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1 a lottery with a severe health outcome and say this
2 is the probability of death, and they assess the
3 expected health costs and say the expected health
4 costs are at least as high as all these components,
5 then I'm done. It doesn't matter how many friends I
6 have.

7 Q. My question is who else would support
8 that. I want to know their name, I want to know if
9 they are tenured professors. I want to know where
10 they are in the United States or in the world that
11 would subscribe to what you just have sworn to under
12 oath here. Who is that person and where are they
13 that they would agree with what you said?

14 A. So I'm supposed to trot out a professor?
15 The leading economist at the Kennedy School,
16 Professor Richard Zeckhauser, I'm sure he -- you
17 know, he doesn't know what I just said, but I'm sure
18 he would agree with it.

19 Q. He doesn't know what you just said and he
20 would agree with what you just said. Good. We are
21 going to depose him. I'm telling you, we are going
22 to ask leave of court to depose anybody in this
23 country or the world that would subscribe to what you
24 told us here today under oath. That's where we are
25 going with this, and I want you to tell me who these

1 people are. Your peers, people you've discussed this
2 with at the Harvard professors club, wherever these
3 people are, or are you the only person in the world
4 that is espousing this? I'm trying to be
5 straightforward with you. Who else would agree to
6 the things you've testified to?

7 MR. ATKESON: Counsel --

8 MR. KERRIGAN: And you are grinning and
9 you think it's funny, and I don't think it's funny.
10 I don't think it's humorous at all.

11 MR. ATKESON: Counsel, let's not -- I'm
12 not grinning.

13 MR. KERRIGAN: You were. You were, but
14 that's okay. People grin all the time. I don't care
15 if you grin.

16 MR. ATKESON: Counsel, let's keep this
17 civil. Let's you and I have a quick discussion
18 here.

19 MR. KERRIGAN: Okay.

20 MR. ATKESON: I would like to find out if
21 what you are asking him is who would agree with the
22 statement that when you want to take a survey, that
23 if you ask a sufficiently general question, you don't
24 need to ask the specific question. Is that's what
25 you are asking him who agrees with him? Or are you

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1 asking him with regard to the specific smoking
2 question, you know, does somebody agree with the
3 specific smoking question, I think he has testified
4 that people are not aware of what he said on the
5 specific smoking question. But you also, you know,
6 say to the witness, "I'm going to depose anybody you
7 answer," you know, the witness has got to decide do I
8 want to say any names to you, because he knows that
9 you are going to blame him then for any hassle you
10 put those people through.

11 MR. KERRIGAN: It's not a hassle. I
12 mean, we're --

13 MR. ATKESON: Taking a deposition of
14 someone who is completely unrelated to this case is a
15 hassle.

16 MR. KERRIGAN: I'm just trying to find
17 out if there's anybody with any intellectual honesty
18 or integrity in this country, truthfully.

19 MR. ATKESON: Is that generally, is there
20 anyone with any intellectual honesty in this country?

21 MR. KERRIGAN: Wait. That would agree
22 with the things that he has just said here. I'm just
23 trying to find out. I would like to have them raise
24 their hands. I'm going to go depose them, and I want
25 to read back the answers that this witness has given

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1 to people who are respected in the field and say, "Do
2 you subscribe to what this man has testified to under
3 oath relative to smoking?" If they say yes, great.
4 If they say never, then I think we are making
5 progress on our side of the case, okay?

6 MR. ATKESON: He gave you the name of
7 someone, and your response was, well, does he know
8 what you said, and he said no, but if he did know, he
9 thinks he would agree. Would you like him to give
10 the names of those types of people?

11 A. Also, before I give names, I would like
12 to have an agreement as to what we are asking them so
13 I can get that in writing. You give me -- in other
14 words, if we're asking them, if I ask if there is a
15 probability of death, is doing that adequate, as
16 opposed -- and people give a sufficiently high
17 probability indicating that they're high expected
18 anticipated costs associated with smoking, is that
19 sufficient, or do I have to ask about the component
20 risks? If that's the nature of the question, write
21 it down. I'll give you some people, but I don't know
22 who is paying these people.

23 BY MR. KERRIGAN:

24 Q. That's interesting and I appreciate that,
25 but here is what I'm asking, is, who would subscribe

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1 to what you are saying about disclosure of risk in a ,
2 survey relative to smoking? Who would subscribe to
3 that. I'm not interested in the general proposition
4 once you know death, you know the worst. I'm talking
5 about what you've testified to here under oath quite
6 unambiguously, that it is unnecessary to disclose
7 anything other than lung cancer is a cause of death,
8 to accurately assess risk perception of illness and
9 disease with smoking.

10 MR. ATKESON: Objection, Counsel. That's
11 not what he has testified to. He testified to there
12 was a big difference between a lung cancer only
13 question and the total mortality question. He said
14 that total mortality question is the question he
15 wants to ask. And he says if he asks that, then it's
16 not necessary to ask the individual components. If
17 you want to go back, we can have all of those answers
18 and questions read back.

19 MR. KERRIGAN: We are going nowhere with
20 this.

21 BY MR. KERRIGAN:

22 Q. I'm going to ask one more time. One more
23 time. Other than the tobacco industry, do you know
24 of anybody that would subscribe to or agree with what
25 you are testifying to here today about risk

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1 perception being adequately tested by the disclosure
2 of a question about lung cancer and the specific
3 exclusion of any other illness and disease? Do you
4 know anybody that would subscribe to what you've said
5 here? And we are going to depose them and we're
6 going to give them the same information and ask them
7 if they agree with you.

8 A. I don't subscribe to that, what you just
9 said. That's not what I subscribe to.

10 Q. Well, tell me what you subscribe to.

11 A. Mr. Atkeson expressed it quite well.

12 Q. I would rather have you tell me your
13 words instead of a lawyer.

14 A. I was prefacing it to try and let you
15 know that we've said this before, and I've said it
16 before, and he has said it before.

17 Q. I don't really care what he says.

18 A. Let me finish my answer. If you don't
19 want to hear my answer, let's take a break. Do you
20 want to take a break, or do you want me to talk? You
21 pick it.

22 Q. No, but I --

23 A. Wait. You decide. I'll talk or I'll
24 break. I'm breaking. Excuse me. I'm breaking.

25 Q. We have an agreement you could break

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1 anytime you want to, and we could absolutely do
2 that.

3 THE VIDEOGRAPHER: We are off the
4 record.

5 (A break was taken.)

6 THE VIDEOGRAPHER: We are on the record.

7 Q. I'm going to review some testimony that
8 you've given in Mississippi, and just ask you if this
9 is correct or not, and we will go through this fairly
10 quickly, that you have no notes from any meetings
11 with the lawyers regarding the questions -- and the
12 framing of those questions for the survey?

13 A. That's correct.

14 Q. I don't believe you've read any of the
15 other experts' depositions in the Florida case, or
16 have you?

17 A. I've not read any depositions.

18 Q. That you believe that the cigarette
19 industry could not improve the public's understanding
20 of the risk of cigarette smoking by changing the
21 warning labels on a cigarette packs?

22 A. I think the warning labels are mandated
23 by Congress, and anything they would do to get people
24 to the closer -- to the accurate risk perception
25 would not be permitted.

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1 Q. Things like cigarette smoking causes
2 emphysema, cigarette smoking causes lung cancer,
3 cigarette smoking causes illness and disease,
4 cigarette smoking causes Berger's disease, cigarette
5 smoking causes cancer of the rectum -- you don't
6 think warning labels like that would increase the
7 public's perception of risk?

8 A. In terms of getting the risk belief
9 closer to the accurate -- more accurate risk belief
10 number, no.

11 Q. In other words, it won't change it. If
12 anything, it might bring it down?

13 A. It might increase the risk perceptions,
14 but that would be bad because they already
15 overestimate the risks.

16 Q. What we don't want to do is we don't want
17 to scare the public any worse than they are scared?

18 A. The objective of risk information is to
19 portray risk as honestly as you can, not to alarm the
20 people.

21 Q. And you think that these warnings that
22 I've just talked about, very explicit warnings, would
23 tend to alarm people?

24 A. I think they might confuse people as well
25 and the problems of information overload and blank

1 taxes on cigarettes and that falls shorts of a ban,
2 and there they had smuggling problems with their
3 analog of Native Americans. You unleash a whole
4 illegal market in cigarettes, and I would prefer to
5 buy my cigarettes, if I were to buy them, from Philip
6 Morris rather than through the future analog of a
7 drug dealer.

8 Q. You don't think Philip Morris is a drug
9 dealer?

10 MR. ATKESON: Objection, argumentative.

11 BY MR. KERRIGAN:

12 Q. You used that question. I don't mean to
13 be argumentative at all. Are you familiar with their
14 publications that they are selling a drug?

15 A. Philip Morris is not selling an illegal
16 drug. Whatever it is they are selling, it's not the
17 same thing as selling cocaine.

18 Q. You're saying the difference is between
19 an illegal drug and a legal drug.

20 MR. ATKESON: Objection.

21 Mischaracterizes his testimony.

22 BY MR. KERRIGAN:

23 Q. Is there a difference between an illegal
24 drug and a legal drug?

25 A. Whatever they are selling, they are

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1 stares when they see Berger's disease.

2 Q. You think they might want to ask what is
3 it?

4 A. That's not the way you write a warning,
5 to write a warning that asks -- gives people
6 information that they can't comprehend in the hopes
7 that they are going to run off to Encyclopedia
8 Britannica.

9 Q. You believe that there are a number of
10 people in this country that are engaged in an
11 antitobacco crusade. I think you referred to that,
12 haven't you?

13 A. I don't think I've said antitobacco
14 crusade in any published writings. I may have said
15 it in a deposition.

16 Q. Who are you referring to?

17 A. There are a lot people that want to ban
18 cigarettes, period, as opposed to fostering accurate
19 risk beliefs.

20 Q. Do you think it would be a good idea to
21 ban cigarettes or a bad idea?

22 A. Bad idea.

23 Q. Do you base this opinion solely on
24 economics and not on medicine?

25 A. In Canada they have raised the excise

1 selling a product that the United States government
2 does not object to them selling. They have the right
3 to sell this product. It's not illegal to sell this
4 product.

5 Q. We know. We have heard that from others
6 that it's not illegal to sell the product, but my
7 question to you is when you refer to the black
8 market, are you saying that Philip Morris is not in
9 the legal drug business? Is it your testimony that
10 they are not in the legal drug business?

11 A. They sell cigarettes. Cigarettes contain
12 nicotine. You can label it whatever you want. I've
13 never used the phrase "legal drug business," and I
14 won't.

15 Q. Is it a drug to you?

16 A. That's a medical judgment. I don't deal
17 in medicine.

18 Q. You made this statement in the
19 Mississippi deposition: "Well, except for the Audits
20 and Survey data and the way I redid the risk
21 question, nobody else in the literature that's
22 published has asked the questions in a meaningful
23 way. And since no other academic has done it
24 correctly, I would be surprised if the company did.
25 So I would be a surprised if it was a study of the

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1 same caliber as the kinds of studies that I'm relying
 2 upon." Did you make that statement?
 3 A. Yes.
 4 Q. Do you stand by it today?
 5 A. Yes.
 6 Q. No caveat?
 7 A. No caveat.
 8 Q. You made this statement: "My positions
 9 are not going to be swayed by internal company
 10 studies." Same statement today? Any caveats?
 11 A. No caveats.
 12 Q. Same statement today?
 13 A. I know of no information, internal
 14 company studies that would sway me.
 15 Q. That wasn't the question. Here was the
 16 question. "My positions are not going to be swayed
 17 by internal company studies." Do you state that
 18 today and are there any caveats?
 19 A. I cannot envision any internal company
 20 studies that would sway my opinions.
 21 Q. You made this statement: "The value I
 22 would place on anybody else's studies, whether it's
 23 the tobacco industry or anything else, would be zilch
 24 because I already have the studies that have nailed
 25 down this effect. I know the answer."

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1 A. What effect are we talking about? Let's
 2 give the context.
 3 Q. Here is the question: "Isn't it fair to
 4 say that without having the benefit of seeing any
 5 such studies in the possession of the tobacco
 6 industry about risk perception by the public, you are
 7 not in any position to really evaluate whether those
 8 studies would be of any use to you in formulating
 9 your opinion?"
 10 Your answer was: "The value I would
 11 place on anybody else's studies, whether it's the
 12 tobacco industry or anything else, would be zilch
 13 because I already have the studies that have nailed
 14 down this effect. I know the answer."
 15 A. I've asked the questions in all the
 16 diverse ways that I think are meaningful, and I'm
 17 quite happy with the results. I'm not -- yes, I
 18 would not be influenced by tobacco industry studies.
 19 Q. Do you subscribe to that answer that you
 20 gave to that question in the Mississippi deposition?
 21 A. Yes, where the effect is that people
 22 overestimate the risk and I've shown that, yes.
 23 That's the effect we are talking about. We are not
 24 talking about my other research. This is the
 25 context. I'm trying to define the context.

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1 Q. I think you are quite correct. They are
 2 talking about risk perception.
 3 A. Yes.
 4 Q. That was stated in the question.
 5 A. All I'm saying is that I've shown that
 6 people overestimate the risk.
 7 Q. Okay. What was the precipitous cause of
 8 your involvement with the tobacco industry or Jones,
 9 Day in 1985? What caused you to come in contact with
 10 them or the tobacco industry in a professional
 11 capacity?
 12 MR. ATKESON: Did you say '95 or '85?
 13 MR. KERRIGAN: 1985. I'm sorry.
 14 MR. ATKESON: That's okay.
 15 A. I believe the Cippolone case was going on
 16 at the time.
 17 BY MR. KERRIGAN:
 18 Q. Were you involved in that case?
 19 A. No, but they just wanted to talk to me
 20 about risk beliefs and how people think about risk.
 21 Q. Who called you?
 22 A. Barbara Kasir.
 23 Q. From Jones, Day?
 24 A. Yes.
 25 Q. Who do you think Jones, Day represented

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1 at the time?
 2 A. R.J. Reynolds.
 3 Q. Do you own any tobacco company stocks?
 4 A. No. My pension plan at Harvard, TIA
 5 Craft, might have it.
 6 Q. Okay. Have you ever made the statement
 7 at any time in the past that the tobacco industry
 8 would never subscribe to your lifetime analysis work
 9 because it admits causality?
 10 A. I've never said that.
 11 Q. What have you said about that subject,
 12 the best you can recall it?
 13 A. I've said the, orally -- I don't think
 14 I've written anything on this. I may have said this
 15 is not an analysis that they have embraced or
 16 initiated. I was the one who did it. But I don't
 17 recall writing anything to that effect.
 18 Q. My question was, Have you ever stated
 19 that?
 20 A. Repeat exactly what I suppose --
 21 Q. Yes, that the tobacco industry would
 22 never support or adopt your lifetime cost analysis
 23 because it assumes causality?
 24 A. I've never said that. In fact, the fact
 25 that I'm here today would seem to indicate that

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1 somebody in the tobacco industry believes in my
2 lifetime analysis.
3 Q. Really, I wasn't dealing with what
4 somebody else believes as evidence of anything. I
5 was simply asking you if you made that statement. I
6 understand you've reached a conclusion from that, but
7 I'm asking if you've made the statement that the
8 tobacco industry will never embrace this lifetime
9 approach because it assumes causality.

10 A. I have said they have never embraced it.
11 That's different from saying they have never been
12 willing to adopt it. This is not the kind of
13 analysis they would adopt with enthusiasm, and that's
14 what embrace would mean.

15 Q. Okay. Have you referred to yourself as a
16 psychologist at any time?

17 A. I work with psychologists, but I've never
18 said I was a psychologist.

19 Q. Have you ever held out that you've done
20 any work in psychology to anybody for any reason in
21 the past?

22 A. I've done work on the psychology of risk
23 perception. So my work would be indistinguishable
24 from that done by a lot of psychologists. I work
25 with psychologists. I coauthor with psychologists.

1 I run a journal that we publish papers by
2 psychologists.

3 Q. I think you've referred to yourself as
4 being on the leading edge of cognitive psychology.

5 A. No, no. I do work that intersects with
6 cognitive psychologists, but I'm not a cognitive
7 psychologist. I'm an economist.

8 Q. My question was not what you are or not.
9 I just said that you said, "I'm on the leading edge
10 of cognitive psychology."

11 A. I don't recall ever saying anything
12 exactly like that. I've worked with leading
13 cognitive psychologists.

14 Q. Let me just read to you from your
15 testimony in Sarah Sawtell versus DuPont. This is
16 the case we talked about earlier. From page 15 of
17 the transcript you've, in a narrative response, which
18 I'll be glad to show you the whole response, "If you
19 read the blunders on some of my forthcoming books,
20 you will find that I'm at the cutting edge of
21 cognitive psychology in some of my work."

22 A. Some of my work the cognitive
23 psychologists think is right at the forefront of
24 their field as well. That's all that means.

25 Q. Okay. Just wanted to know if you said

1 it. You are not an expert in addiction pharmacology,
2 toxicology, biochemistry, or any of those fields?

3 A. That's correct.

4 Q. You made a comment about behaviorists,
5 that -- let me quote -- "That it's usually an insult
6 in economics to call somebody a behaviorist. It
7 means that they don't have any skills." Was that one
8 of the things you say and later you think that wasn't
9 really appropriate, or do you stand by that today?

10 A. I'm not saying that's what I think, but
11 behaviorists --

12 Q. That's not what you think?

13 A. I don't believe that behaviorists
14 necessarily have no skills. In fact, I publish
15 papers in my journal that might be called
16 behavioral. But in terms of the profession at large,
17 they view people who analyze real data with
18 sophisticated econometric methods as doing higher
19 level research.

20 Q. Here was the question: "But are you what
21 is commonly known or referred to as a behaviorist?"
22 Here was your answer: "That's usually an insult in
23 economics to call somebody a behaviorist. It means
24 that they don't have any skills."

25 A. It means that you can't do conventional

1 economics. You become a sociologist or something
2 else.

3 Q. But you still subscribe to that statement
4 that you make?

5 A. If you are not recognized as a mainstream
6 economist and you are only a behaviorist, generally
7 you are not viewed as being one of the cadre of main
8 economists who practice the art of economics.

9 Q. Okay. So it's an insult to someone that
10 is an economist to be called a behaviorist?

11 A. If you can only publish in the Journal of
12 Behavioral Decisions or similar types of journals,
13 that's not as good as being able to published in
14 recognized journals.

15 Q. Okay. Good. You were asked about the
16 Audits and Surveys at page 71 here of your
17 Mississippi testimony. Question: "This audit, what
18 did we call it? The Audits and Surveys that was done
19 in the early '80s, it was done at the commissions of
20 Jones, Day law firm, one of the law firms that
21 represented the cigarette manufacturers, correct?"
22 Your answer was, "That's correct." Question: "And
23 you do understand that that study was commissioned in
24 connection with or in anticipation of litigation in
25 support of the tobacco industry's position,

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1 correct?" Your answer was, "Yes." No change today?
2 A. No.
3 Q. You were asked, "Do you know what the
4 industry's position as to risk perception is today?
5 Do you know what it is?" Your answer was, "To the
6 best of my knowledge, it would be that the public
7 understands whatever risks there might be associated
8 with smoking." Do you still stand by that today?
9 A. Yes.
10 Q. Do you consider your research work
11 controversial, in risk perception?
12 A. It's innovative and breaks new ground.
13 And usually when you tell people things that are
14 surprising, that's controversial.
15 Q. I was interested to note in your
16 testimony in Mississippi that you had never read the
17 Brown & Williamson documents. Have you read them
18 since then?
19 A. No.
20 Q. Are you interested in them?
21 A. Only if I have time to read them.
22 Q. Have you heard anything that was revealed
23 in those Brown & Williamson documents that you
24 thought might be worth reading or following up on?
25 A. No.

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1 Q. Now, you made this statement: Question:
2 "Is the manufacturer of a product in general the
3 best source of information about the product?" Your
4 answer was, "No. I've indicated it's not always the
5 best source. I just said that." Do you still say
6 that?
7 A. It depends on the context. Sometimes the
8 manufacturer is, sometimes the manufacturer isn't.
9 Q. A number of books have been written about
10 the cigarette industry. You testified at
11 Mississippi, and without going through them all, that
12 you hadn't read any of them. Are there any books
13 that you've read about the cigarette industry that
14 you can recall today?
15 A. About the industry itself as opposed to
16 cigarette economics?
17 Q. Let's not deal with cigarette economics,
18 just the industry. Cigarette Papers by Glantz,
19 Kluger's book Ashes to Ashes, Smoke Screen by Phil
20 Hiltz, have you read any of those books?
21 A. No.
22 Q. Do you know that Richard Kluger took ten
23 years to research the tobacco industry and has all of
24 his research materials on reserve in the Sterling
25 Library at Yale? Did you know that?

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1 A. No. He must be a slow worker.
2 Q. Ten years?
3 A. Ten years.
4 Q. I think it's nearly a thousand pages.
5 MR. ATKESON: Of notes, is that what you
6 are saying?
7 MR. KERRIGAN: Text is a thousand pages.
8 BY MR. KERRIGAN:
9 Q. But you never read the book?
10 A. Never read the book.
11 Q. You have no interest in reading it?
12 A. I have interest in doing my own research,
13 not in reading a book about the industry.
14 Q. You don't think it would help to know
15 what the industry has done or not done in terms of
16 release of public information on the issue of risk
17 perception?
18 A. I don't see how that would affect my
19 analysis in which I use the Surgeon General's
20 estimates as a reference point and see how close
21 people are to that.
22 Q. It would be inconsequential to you that
23 the cigarette industry may have misrepresented the
24 consequences of smoking, underestimating risk? That
25 would be inconsequential to you?

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1 A. So long as people overestimate the risk
2 compared to the best scientific reference point,
3 that's the focus of my work, and that's all I'm
4 testifying on.
5 Q. Okay. Inconsequential?
6 A. It's a different question.
7 Q. Do you think they have deliberately lied
8 to the American people for the last 30 years about
9 what they knew about their product? Yes or no?
10 MR. ATKESON: Objection. Assumes a fact
11 not in evidence.
12 MR. KERRIGAN: No, I want to know.
13 MR. ATKESON: When you say deliberately
14 lied, you are assuming that they lied, and that's
15 it's either --
16 BY MR. KERRIGAN:
17 Q. Okay. I want you to assume that they
18 deliberately have lied to the American people for the
19 past 30 years as an assumption in the hypothetical
20 question, and that the truth, if revealed, would show
21 causality, would demonstrate enormous problems with
22 cigarette smoke for illness and disease. I want you
23 to assume that in the hypothetical. Would it ever
24 affect risk perception?
25 A. We already have warning labels that do

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1 communicate enormous risks.
 2 Q. You did some regression analyses, you
 3 said, and I think you did on flat feet, didn't you?
 4 The flat foot question?
 5 A. That would be one of the variables that
 6 could go into the analysis.
 7 Q. Do you know what propensity scoring is?
 8 A. No.
 9 Q. When you did this regression analysis did
 10 you use off-the-shelf regression software?
 11 A. Yes.
 12 Q. What did you use?
 13 A. I don't know. SAS, LIMDED, or STATA.
 14 One of the three.
 15 Q. Okay. The ones commonly used?
 16 A. Right.
 17 Q. Has anybody ever told you that those
 18 regression analyses in that software are inherently
 19 unreliable?
 20 A. No, nobody has ever told me that.
 21 Q. Would you be interested to know that
 22 Dr. Rubin has testified to that in this case on
 23 behalf of the tobacco industry?
 24 A. If you get similar results -- if I run
 25 the same regression with SAS, LIMDED, and STATA, then

1 A. Yes.
 2 Q. What is the truth that you are referring
 3 to here that they could convey to people in a
 4 convincing way?
 5 A. I don't know the exact truth, but I
 6 believe in my smoking book I give a smoking mortalit
 7 risk range of between .18 to .36. Maybe one-fifth to
 8 one-third chance of dying from smoking, based on the
 9 best available scientific evidence.
 10 Q. And you are saying if that was conveyed
 11 to the people, they would believe that smoking is
 12 less risky than they do now?
 13 A. Because the people in general believe
 14 that smoking is riskier than that.
 15 Q. I understand, but this statement that you
 16 made is accurate?
 17 A. Yes.
 18 Q. And you subscribe to it today?
 19 A. Yes.
 20 Q. You went on to say, "Right. If they
 21 provided accurate risk information in a convincing
 22 manner, it would decrease the public's risk
 23 perception." I think that's the same thing.
 24 A. Yeah.
 25 Q. I believe that you have concluded that

1 I would have substantial confidence in them.' There
 2 are regression packages that have errors. LIMDED has
 3 errors, for example. And you call up the people lots
 4 of times to try to find out what the error in their
 5 program is. So they are not foolproof.
 6 Q. It wasn't necessary for you to do a
 7 propensity scoring in order for you to rely on the
 8 regression scoring that you did?
 9 A. I don't use propensity scores.
 10 Q. In fact, you don't even know what it is,
 11 do you?
 12 A. Exactly.
 13 Q. I'll say as an aside, you may not be
 14 alone in that respect but Dr. Rubin has testified
 15 about it. Let me go to page 105 of your Mississippi
 16 testimony. You said, "If the tobacco industry could
 17 provide full information in a convincing manner to
 18 people, it would lower their risk perceptions." The
 19 question was, "What do you mean by lower their risk
 20 perceptions?" Your answer was, "People now believe
 21 the risk is higher than scientists estimate it be.
 22 If the tobacco industry could convey the truth to
 23 people in a convincing way, people would believe that
 24 smoking is less risky than they do now." First of
 25 all, did you say that?

1 national survey data is appropriate for use in an
 2 individual state?
 3 A. For what?
 4 Q. By economists. Using national survey
 5 data, that you can reach reasonable conclusions based
 6 on national survey data for a state. Mississippi,
 7 Florida, New York.
 8 A. If I were to tailor-make the data to the
 9 state, I would want to say here is the national
 10 survey information, and I would adjust the
 11 demographic characteristics to match those of the
 12 state and then project out what the risk perceptions
 13 would be, and that would be a reasonable estimate,
 14 but it would ignore any state-specific factors other
 15 than demographics.
 16 Q. Is it your testimony today that you said
 17 essentially that in your Mississippi deposition?
 18 A. I may have said that.
 19 Q. And you may not have said that?
 20 A. I still believe it now. If I said it
 21 before, I believe it now. If I didn't say it before
 22 this is what I believe.
 23 Q. After the lunch break I'm going to read
 24 you exactly what you said in Mississippi and then ask
 25 you if your testimony today is any different. Do you

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1 think your testimony you just gave now is different
2 that the testimony you gave in Mississippi on that
3 issue using national survey data?

4 A. Depends what you are talking about. So I
5 don't know the context.

6 Q. You made a comment that there has been a
7 national campaign against the cigarette industry.
8 Page 106 of your deposition. And it was in response
9 to what do you attribute the reason for that to be,
10 which dealt with risk perception would have been
11 lower in the '80s than it was in the '90s. I think
12 that's the context of that. You went on to say there
13 has been a national campaign against the cigarette
14 industry. Is that your belief?

15 A. Yes.

16 Q. Who do you think is running that
17 campaign?

18 A. I don't believe it's -- it has a specific
19 head, but it's become politically correct to oppose
20 the cigarette industry, and lot of people are going
21 to profit from opposing the cigarette industry.

22 Q. A lot of people are profiting by being in
23 the litigation.

24 A. That's right.

25 Q. Some of them are \$500 an hour.

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1 A. Some of them.

2 Q. You are not the cheapest and you are not
3 the most expensive, if that makes you feel any
4 better.

5 A. Makes me feel worse.

6 Q. You were asked about the public's
7 awareness of the contents of cigarettes, and I think
8 it's safe to say that you do not think that would
9 have any impact on risk perception; is that correct?

10 A. No, I didn't say that. I said it
11 wouldn't necessarily make the risk perceptions more
12 accurate.

13 Q. I'm sorry, wouldn't make them more
14 accurate. Understanding what these chemicals are in
15 cigarettes and how they come from the combustion
16 process and all that wouldn't help the public
17 understand?

18 A. I think it's more complicated than you
19 want to get in a warning.

20 Q. You still think lettuce is carcinogenic,
21 and is it at the same level as cigarette smoking?

22 A. Never said the second thing, but Bruce
23 Ames, the leading cancer scientist, said lettuce is
24 carcinogenic. I'm just taking his results.

25 Q. Okay. Is it equivalent to cigarette

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1 smoking?

2 A. Of course not.

3 MR. ATKESON: Counsel, let me just ask,
4 it's a little after 12.

5 MR. KERRIGAN: We got another hour,
6 probably. So it would be a good time to break.

7 THE VIDEOGRAPHER: We are off the
8 record.

9 (A lunch break was taken from 12:02 p.m.
10 to 12:49 p.m.)

11 THE VIDEOGRAPHER: We are on the record.

12 BY MR. KERRIGAN:

13 Q. We are back after a lunch break, and
14 we've all taken our coats off because of the
15 temperature in the room, and, Dr. Viscusi, are you
16 ready to continue the deposition at this time?

17 A. Yes, I am.

18 Q. In regards to any responses that you made
19 this morning, do you wish to elaborate upon any of
20 those responses? Let me move my mike up here.

21 A. It's both warm and rainy.

22 Q. Right. That's the thunder from the area
23 we are at here. Dr. Viscusi, do you wish to add,
24 deduct, or further elaborate on any answer you gave
25 before our lunch break today?

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1 A. I can't think of any changes.

2 Q. Okay. Good. You made the statement, and
3 I believe you have today too, that the role of hazard
4 communication should be to foster accurate risk
5 perceptions.

6 A. That's correct.

7 Q. You do not believe that it would enhance
8 the accuracy of the risk perceptions for the public
9 to understand exactly, A, what's in a cigarette, and
10 B, what illnesses or diseases are caused or
11 exacerbated by cigarette smoking?

12 A. I think excessively detailed information
13 that went through the components of cigarettes would
14 not further their understanding and would cause
15 problems in information overload.

16 Q. In an economic analysis of -- and I
17 realize we've gone back and forth here between these
18 two areas, but if there is any question about that,
19 you can always ask me. Do you understand the concept
20 of loss of years of productive life? Have you ever
21 heard of that before?

22 A. Loss of years of work life.

23 Q. Okay, but the concept of productive life,
24 you haven't heard of that?

25 A. I've heard of quality-adjusted life

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1 years.

2 Q. The concept of the loss of years of life
3 in terms of the contribution that life may have on
4 the economic welfare of the state is not included in
5 your lifetime analysis; isn't that right? Other than
6 the add-back for taxes.

7 A. If smokers earn less money and pay lower
8 contributions to pension plans, for example, is that
9 what you are talking about?

10 Q. I'm talking about the impact on the
11 economic welfare of the state when a 50-year-old man
12 who is involved in a wage-earning capacity is killed
13 or dies from cigarette smoking-caused illness or
14 disease. Your lifetime analysis does not take into
15 consideration other losses that the state incurs by
16 virtue of his death?

17 A. Depends on how you define losses. If you
18 are defining losses as the gross domestic product of
19 the state, including income of all of the state
20 members, that's correct, I'm excluding income loss to
21 the individual once the individual is dead; whereas
22 that would show up in the gross domestic product of
23 the state.

24 Q. You are saying the income loss would show
25 up on the individual basis, but it would not be -- it

1 would be a wash in the gross domestic product of the
2 state?

3 A. No, I'm not. I'm saying if an individual
4 dies, and let's say that person is not replaced in
5 the state, then the gross domestic product of the
6 state drops, but that's not what I'm measuring. I'm
7 looking at the budgetary costs, not the gross
8 domestic product effects.

9 Q. I think you've testified that smokers
10 have a lower risk perception than nonsmokers?

11 A. That's true.

12 Q. And I think your statement has been that
13 they are closer to being accurate on the risk
14 assessment than nonsmokers?

15 A. That's true as well.

16 Q. Do you think people who don't smoke,
17 then, perceive cigarette smoking to be much more
18 harmful than it is?

19 A. They perceive it to be more harmful. I'm
20 not sure what "much more harmful" is.

21 Q. They perceive it to be more harmful than
22 it is.

23 A. Yes.

24 Q. And those nonsmokers are dead wrong about
25 that perception, aren't they? They are wrong?

1 A. They are wrong in the sense their
2 perception is too high, on average.

3 Q. So they don't smoke and they may have
4 reached that conclusion based on erroneous perception
5 of risk?

6 A. That could have affected their decision,
7 yes.

8 Q. Let me see if I understand this statement
9 and if it's still your testimony. People with lower
10 risk perceptions regarding an activity will be more
11 likely to do it?

12 A. Yes.

13 Q. Seems intuitive; people with lower risk
14 perceptions would be more likely to do it?

15 A. That's correct.

16 Q. But now you've concluded that smokers
17 have lower risk perceptions not because they smoke
18 but because they perceive the activity to be less
19 risky?

20 A. That's right.

21 Q. And you don't accept the proposition that
22 because they smoke, they think it's less risky?
23 Because they are actually smoking cigarettes,
24 lighting them up and smoking them, they think, hey,
25 it's not as bad as other people say it is?

1 A. I can reject that hypothesis
2 statistically.

3 Q. How?

4 A. By running endogeneity tests to see if
5 smoking affects risk beliefs. In other words, I can
6 do that in terms of a statistical analysis, analyzing
7 the smoking risk perception linkages.

8 Q. Have you done that and published that?

9 A. I've published that for the 1985 Audits
10 and Surveys data. I've not published it for the 1997
11 data because I just got it recently.

12 Q. Do you know of anybody that has accepted
13 what you call your proof, your statistical proof?
14 And what we are talking about is that smokers, by
15 virtue of the fact that they perceive smoking to be
16 less risky, start to smoke?

17 A. Well, it's in published books and
18 published articles, and if the referees did not
19 accept it, they would have let me know that when they
20 reviewed the papers.

21 Q. You keep talking about the referees and
22 the peer review and all these external sources to
23 support these opinions you have. Would you give us
24 names of some people that have done peer review so we
25 might contact them and ask them what they knew about

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1 the data that you supplied that was not in the
2 article.

3 A. The peer review process is a double
4 blind -- at least a blind process, not double blind,
5 for most of these. So I don't know the identity of
6 the reviewers and they are not released to me.

7 Q. Right. So we don't have anybody's names,
8 do we?

9 A. That's the idea of a blind review
10 process, so they can say what they think, and I won't
11 know who they are.

12 Q. Have you ever had a publication submitted
13 that's been rejected by any journals?

14 A. Yes.

15 Q. Let's just take the last five years.

16 Tell me how many publications you submitted and how
17 many have been rejected and which journals.

18 A. I don't remember, and I'm not going to
19 try and reconstruct this right now. I don't
20 remember. But most of my things are published the
21 first time out. And everything I write, I publish.

22 Q. Are you suggesting that when a publisher
23 rejects your publication based on a peer review
24 rejection of the article, that you will submit it to
25 a journal that's kind of like a little step down from

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1 that and try to get it published there?

2 A. Not always. Could be a different
3 emphasis, and I may revise the paper, send it to a
4 comparable journal.

5 Q. You are unable to tell us today articles
6 that you have submitted -- let's just say in the last
7 two years -- that have just been rejected out of
8 hand, sent back to you: We will not publish this?

9 A. I can't think of any that have been
10 rejected flat out in the last two years.

11 Q. What about in the last three years?

12 A. I don't know -- you know, I publish an
13 enormous number of articles. What was the last two
14 years versus the last three years and four years, I
15 don't keep tabs on.

16 Q. The best I can determine, you published
17 about four articles and you've written a book on
18 smoking and risk perception. And I don't see tons of
19 articles. Am I missing something about that?

20 A. I've written about 200 papers.

21 Q. On smoking and risk perception?

22 A. No, 200 papers total. You asked have I
23 written any articles that were rejected.

24 Q. We've gone to another series of
25 questions.

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1 A. Ever, on anything.

2 Q. I think you've answered that. You don't
3 know in the last two or three years.

4 A. I can't -- well, I cannot remember a
5 single paper that I've written in the last two years
6 that was flat out rejected by a journal. That's not
7 not knowing. I cannot know. I've published a lot,
8 I've submitted a lot. I think everything is either a
9 revise and resubmit or is an acceptance. I can't
10 think of a rejection.

11 Q. You went on to say in your answer that
12 you publish a lot.

13 A. Right.

14 Q. I asked you on smoking and risk
15 perception I know four articles and a book. Is there
16 something else out there that you've written on
17 smoking and risk perception in addition to four
18 articles and a book?

19 A. Yes, I have two papers submitted to
20 journals right now, and they are both submitted to
21 journals for the first time.

22 Q. I'm talking about what's been published.

23 A. I don't know the count. I will have to
24 look at my resume, but I've got Review of Economics
25 and Statistics, Journal of Political Economy, the

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1 Poterba-edited volume, The Supreme Court Economic
2 Review, the National Tax Journal. I've got Journal
3 of Human Resources on smoking and seat belts. So I
4 can name at least six off the top.

5 Q. Are there others? What's your smoking
6 and seat belt article?

7 A. People who smoke and people who don't
8 wear seat belts are more willing to work on risky
9 jobs. They are riskier people.

10 Q. I'll just have to ask you a question or
11 two about that. Are you saying people who smoke and
12 don't wear seat belts?

13 A. Either one. Individually people who
14 smoke, individually people who don't wear seat
15 belts. They could be smokers or nonsmokers.

16 Q. But the conclusion is people who smoke
17 and who don't wear seat belts take more risky jobs?

18 A. Let's do them one at a time. People who
19 smoke are more willing to work on risky jobs. People
20 who don't wear seat belts are more willing to work on
21 risky jobs than people who do wear seat belts. So we
22 analyzed each of these effects.

23 Q. How did you describe risky jobs?

24 A. Based on the annual injury rate using the
25 Bureau of Labor Statistics injury scale.

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1 Q. What conclusion did you reach from that
2 as it could possibly be germane to some matter of
3 interest in this lawsuit? Is there anything we can
4 get from that that helps us?

5 A. Yes.

6 Q. Tell me what it is.

7 A. Smokers have shown themselves to be risk
8 takers in other contexts of their lives and have
9 different risk-money trade-offs than nonsmokers.
10 They are more willing to bear risks than are
11 nonsmokers.

12 Q. Does that mean economic risk or does that
13 mean physical labor risk?

14 A. Physical health risks. They are more
15 willing to incur a health risk than are nonsmokers.

16 Q. Is it -- implicit in that is a
17 recognition that smoking is bad for your health?

18 A. No, I'm just saying if you are smoker,
19 are you more willing to work on a hazardous job than
20 a nonsmoker irrespective of whether smoking is risky.
21 And the answer is, yes, smokers are more willing to
22 endanger themselves on the job than are nonsmokers.
23 They require less compensation.

24 Q. Is that a contributor to early mortality?

25 A. Could affect it, yes.

1 you not, addictive and habituation and whatever?

2 It's all the same?

3 A. I'm not going to draw a distinction
4 because I'm not a physician. I'm not going to get
5 into these distinctions because from an economic
6 standpoint, as I discussed in that deposition, what
7 we mean by all these things is that there is a cost
8 to changing the activity.

9 Q. Once again, at page 133 you said, "They
10 know that cigarette smoking is hard to quit once you
11 stop, which is the practical consequence of the
12 addicted drug terminology for their lives." Did you
13 mean once you start or once you stop?

14 A. Once you start smoking, it's hard to
15 quit.

16 Q. Okay. And if you stop smoking, it's hard
17 to stay abstinent of smoking?

18 A. Quitting is not easy, even once you've
19 stopped.

20 Q. The Fourth Circuit Court of Appeals in
21 Florida today issued an opinion that will require the
22 disclosure of the Liggett documents. Are you
23 familiar with that issue?

24 A. I know Liggett has documents. I don't
25 know what's in them.

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Page 17:

1 Q. May not be the smoke. Might be the risky
2 job?

3 A. It could.

4 Q. You think there is adequate risk
5 perception information on the addiction issue?

6 A. I think that people know that quitting
7 cigarettes is hard to do.

8 Q. I think you previously equated that to
9 addiction?

10 A. Whether you label it addiction or
11 habituation is more of a medical terminology issue
12 not one of practical significance. The important
13 thing is that people understand that quitting smoking
14 is hard to do.

15 Q. I think in Mississippi at page 129 you
16 said, "I'm going to say that the public has always
17 known that cigarettes or cigarette smoking is hard to
18 quit once you stop."

19 A. Once you start.

20 Q. Well, this says once you stop. They may
21 have done it wrong in the transcript. Okay, once you
22 start. "That there are costs to quitting."

23 Question: "Did they know it's an addictive drug,
24 Dr. Viscusi?" Answer: "That's what we mean by
25 addictive." So I said earlier, you equate these, do

1 Q. If there are disclosures in the Liggett
2 documents that the tobacco companies have fought
3 vigorously to avoid having disclosed and they are now
4 disclosed, can you tell us ahead of time what effect
5 that will have on risk perception?

6 A. If the press characterizes it as the
7 cigarette industry was hiding dangers that people
8 still don't know about now, then that would increase
9 risk perceptions. So it depends on the character of
10 the report.

11 Q. Let's just say the press publishes the
12 truth. They just publish the notes of counsel and
13 the documents and the public reads them. Can you
14 tell us ahead of time how that's going to affect risk
15 perception?

16 A. I think people would be overwhelmed by
17 that amount of information. I don't think anybody is
18 going to read all those documents. So a lot depends
19 on how they play it. That's not what the press
20 does. The press is not like the Pentagon papers
21 where they are going to reprint all the documents and
22 people will read it.

23 Q. Let me go back and state my question
24 again: You cannot tell us, can you, the effect of
25 risk perception in the public on papers that haven't

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1 been published yet?

2 A. Exactly.

3 Q. You don't know what effect it's going to
4 have?

5 A. I can't tell you what effect information
6 will have if I don't know what the information is.

7 Q. Can you think of any information that if
8 the public knew about it, just hypothetically, would
9 cause their perception of the risk to increase?

10 Information from the cigarette manufacturers.

11 A. I can think of lots of information that
12 might increase the risk perceptions, but that's not
13 our objective. Our objective is to have people have
14 accurate risk perceptions, not to scare people. I
15 can think of lots of information that would not
16 foster more accurate risk beliefs.

17 Q. Can you think of anything that would
18 foster more accurate risk beliefs where that risk is
19 greater than people now think it is?

20 A. We have evidence that the risk is not
21 greater than people now think it is, based on
22 tracking the mortality risks of smokers compared to
23 nonsmokers. So we already know the answer to that
24 question. So I don't see how you are going to get
25 people to increase their risk beliefs to a more

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1 accurate number since people already overestimate the
2 risk relative to the evidence we have on the health
3 consequences to smokers.

4 Q. Let me see if I can summarize it because
5 we are about to end this portion of the videotape.
6 It doesn't really matter what comes out now about
7 cigarette smoking and health, that what we know about
8 epidemiology, what we know about cigarette illness
9 and disease indicates that the perception of the risk
10 is too high in the marketplace anyway, so it doesn't
11 really matter what's disclosed or how it's disclosed;
12 the risk perception is already too high. Does that
13 summarize --

14 A. I don't know what the "it doesn't really
15 matter" means, but I will say the risk perception is
16 already too high.

17 Q. What do you think would be a good way
18 to -- we've got a couple of minutes left. What do
19 you think would be a real good way for the public's
20 risk perception on cigarettes to be right on the
21 button, get right down to the -- where we'd put the
22 hay down to where the goats can get it? What would
23 that be? How would they do that? Let's just say we
24 want the public to really know accurately the risk
25 perception and not have this inflated risk perception

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1 that people are walking around with. How would you
2 do that?

3 A. I would try alternative warning labels
4 with people, and then after presenting the warning
5 information, get them to give you their risk
6 assessment, and experiment with different kinds of
7 information to see which would lead them to have the
8 correct risk belief.

9 Q. You would try new warning labels?

10 A. That's one thing you can control. And
11 you can control access to that. That's one thing I
12 would try.

13 Q. We are going to change the videotape now,
14 so we are going to take a break.

15 THE VIDEOGRAPHER: We are off the
16 record.

17 (Discussion off the record.)

18 THE VIDEOGRAPHER: This is Tape No. 3.
19 We are on the record.

20 BY MR. KERRIGAN:

21 Q. One of the things you would do is you
22 would try some different warning labels to try to get
23 this risk business down to some more accurate level,
24 perception of risk?

25 A. That's one approach you could take.

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1 Q. What would you say in those labels?

2 A. I'm not sure exactly how I would do it.
3 I would experiment with different kinds of things.
4 You could try quantitative risk information, but I'm
5 not sure that would take. First you would want to
6 get people to agree on what you would want to say as
7 opposed to how you would say it. So I've estimated
8 the risk of death as between .18 and .36. Can we
9 refine that estimate at all? And you would like to
10 refine it so you could try and get people as close to
11 the true risk assessment as you could.

12 Q. You would try quantitative labeling.
13 What else?

14 A. You could try qualitative labeling and
15 then debrief them on where it puts them in the
16 quantitative risk scale.

17 Q. Say that in a way that I can understand
18 it. What would you say?

19 A. I don't know what I would say. I could
20 try different kinds of language on cigarettes that
21 asks them if you saw this language on cigarettes,
22 what would you assess the mortality risk to be, et
23 cetera, et cetera, to try to see which kinds of
24 words --

25 Q. Wait just a second. You are saying

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1 mortality risks. Is that what you are trying to warn
2 about is mortality? You are not trying to warn about
3 morbidity?

4 A. That's the primary focus, mortality.

5 Q. You are not trying to warn about chronic
6 emphysema?

7 A. If they believe there is a 50-50 chance
8 of being killed, for example, then that would have an
9 equivalent effect as believing there is a, you
10 know, .3 chance of death and some probability of
11 emphysema. We can weight the different health
12 outcomes, and that can be part of the process, and
13 try to figure out what probability of death is
14 tantamount to all the health risks of cigarettes.

15 Q. With all of the work you've done and your
16 familiarity with these law firms, have you read
17 anything like that? Has anybody done the things you
18 are talking about?

19 A. No. Congress has mandated the labels,
20 and I've often in my writings urged the government to
21 test warning labels relative to some risk reference
22 point to see if people are on the money, so to
23 speak. That's not the way Congress writes labels.

24 Q. Congress, you've mentioned this probably
25 a dozen times in this deposition. Don't you take

1 respond to these risk beliefs in their decisions, and
2 that's what that means.

3 Q. Why do you think this work is
4 controversial? Because it's new? You've said
5 earlier because it's new. Is it because it's new or
6 because it's absurd?

7 A. Which work?

8 Q. The whole risk perception work. All this
9 risk perception work that you are doing that produces
10 such results as teenagers understand the consequences
11 of the risk and knowingly start smoking?

12 A. I never said that was controversial
13 particularly. It wasn't controversial. That sailed
14 right into a journal.

15 Q. You have sailed a lot of things into
16 journals. What I'm asking you is what portion of
17 your work do you think is controversial?

18 A. I think a lot of people assume that the
19 reason people smoke is that they underestimate the
20 risk. That would be the popular misperception. To
21 the extent that's controversial, it challenges
22 popular beliefs and misconceptions. It's not
23 controversial in terms of the economic theory.

24 Q. Be awful hard to have anything that's
25 controversial in economic theory, wouldn't it? You

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1 great refuge in the fact that the Congress has
2 required the cigarette manufacturers to put the
3 Surgeon General's warning on the pack? You take
4 great comfort in that, do you not, as a warning?

5 A. I don't care whether it was Congress or
6 the FDA. I mean, which government agency doesn't
7 matter to me. But what is pertinent for the purposes
8 of the litigation is that Congress has done it and
9 they said once you put the labels on, you fulfill
10 your informational obligation.

11 Q. Doesn't matter if the industry knows that
12 that's not adequate or insufficient?

13 MR. ATKESON: Objection. Calls for legal
14 conclusion.

15 MR. KERRIGAN: All right.

16 BY MR. KERRIGAN:

17 Q. Did you make the statement that teenagers
18 make informed, intelligent decisions about smoking?

19 A. I may have said that. May not be every
20 teenager, but teenagers, 16- to 19-year-olds is the
21 group.

22 Q. They make informed decisions about
23 smoking?

24 A. 16- to 19-year-olds either have accurate
25 risk perceptions or overestimate the risks, and they

1 don't have to answer that if you don't want to.

2 A. There is no point to answering it.

3 Q. Don't they call it -- what is it, the
4 dismal science that you are engaged in? Is that the
5 name? Or the dark science?

6 A. Two centuries ago they called it that.

7 Q. I thought they are still calling it that
8 because it's basically assumptions that you make and
9 theories that you give that in large measure is
10 devoid of academic merit. I'm saying that as a broad
11 statement about economic publications, not you
12 personally.

13 MR. ATKESON: Counsel, let me object.

14 MR. KERRIGAN: I'm not trying to insult
15 the witness. I just said in terms of economic
16 publications.

17 MR. ATKESON: Are you asking him how the
18 name dismal science came about?

19 MR. KERRIGAN: Yeah. He could start
20 there.

21 A. It was not Malthus, but it was in that
22 era, criticizing economics as the dismal science with
23 the Malthusian population growth theories.

24 BY MR. KERRIGAN:

25 Q. Isn't the problem with all of this,

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1 Dr. Viscusi, is you get to express opinions, you get
2 to be paid for opinions that nobody can really
3 determine are right or wrong?

4 A. Sure you can. Go out and run a survey,
5 analyze the data, see what happens, publish it. You
6 can verify my -- that's the beauty of empirical
7 work. You can verify whether it's true or not. Same
8 with the cost calculations. You can verify whether
9 it's true or not. Get the numbers, crank them out.

10 Q. But you have to work on your assumptions,
11 Dr. Viscusi. You've got a list of assumptions that
12 are a mile long in your work.

13 A. What assumptions? Let's go through them.

14 Q. I would be glad to go through the
15 assumptions.

16 A. That's fine. If you can come up with a
17 mile of assumptions, I'll be impressed.

18 Q. Let's reverse that and ask this: There
19 are no assumptions in your work, then. Your work is
20 based solely on empirical data. That's fine. We
21 will leave it. Then we won't have to ask a question
22 on it.

23 A. My work on risk perception is just that.
24 It's based on empirical data, which I compare to
25 reference points established by government studies.

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1 Q. Dr. Viscusi, the core of the whole
2 empirical data is just an effort to refine the
3 subjective phrasing of the questions in the survey.
4 That's the assumptions that the questions are valid.
5 It's implicit in all survey work, that the questions
6 are valid. Do you agree with that or disagree with
7 that?

8 A. I assume -- I test whether the questions
9 are valid. I don't assume that.

10 Q. Well, we dealt with the one sensitivity
11 test that you did. But implicit in survey work is an
12 assumption that the questions are eliciting responses
13 that are accurate?

14 A. But you can check that in a variety of
15 ways.

16 Q. On page 171 you refer to an antitobacco
17 crusade that's taking place in the country. What are
18 you talking about?

19 A. There are a lot of people who would like
20 to ban cigarettes, who would like to use any
21 mechanism they could to drive cigarettes out of the
22 economy.

23 Q. Is that the false dilemma?

24 A. What are we -- no, I don't think that's
25 the false dilemma. What's the dilemma that you would

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1 like to ban cigarettes? Why is that a dilemma?

2 Q. No, it's a false dilemma. I'm saying
3 logically it's a false dilemma. You haven't talked
4 about the people in this country who want the truth
5 to be told about what cigarette smoking does to
6 people. That's a group. Don't you see that group
7 out there? Or is it just a group that want to ban
8 cigarettes completely; that's the antitobacco group
9 in the country.

10 A. That's one group.

11 Q. There are a lot of people out there that
12 think the cigarette industry hasn't been truthful;
13 you would agree with that, don't you?

14 A. Some people think that too.

15 Q. Well, do you think all these people are
16 all in a big conspiracy of some kind? Kind of an
17 unstated conspiracy against the tobacco
18 manufacturers?

19 A. Conspiracies usually require meetings and
20 collusion, and I think it's tough to meet with
21 thousands of people and getting them together.

22 Q. What do you think motivates these people?

23 A. I think some of it may be trying to
24 impose their own preferences on other people.

25 Q. For the individual who smokes, tell me

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1 the economic benefit to that individual.

2 A. They enjoy it.

3 Q. What makes you say that?

4 A. They are willing to pay money for it.

5 Q. People pay money for heroin.

6 A. They may enjoy heroin too.

7 Q. Your belief is that people smoke because
8 they enjoy it?

9 A. Yes.

10 Q. You don't think there is any little spot
11 in there for addiction or what you've called
12 habituation or addiction or anything like that? It
13 just sets a path; people do it because they like it?

14 A. They prefer smoking to not smoking, for
15 whatever reason.

16 Q. How many people do you know that smoke
17 one or two cigarettes every now and then whenever
18 they feel like it? Do you know very many people like
19 that?

20 A. I know people who smoke cigars every now
21 and then, but I just don't know cigarette smokers. I
22 don't hang out with that crowd.

23 Q. I asked if you knew of any economic
24 benefit to the individual smoking, and you said
25 because they enjoy it. Is there any other?

1 A. If you are happier about your life, that
2 may have a benefit as well. If smoking makes them
3 happier, that could have dividends. But I have not
4 done research on that.

5 Q. Are you around people -- you say you are
6 not around people that smoke?

7 A. That's correct.

8 Q. So you don't have any anecdotal exposure
9 to somebody who is smoking every 38 minutes, or some
10 such thing as that, to observe them?

11 A. I know a secretary at Duke who smokes.
12 I've seen people smoke, but I've never had close
13 enough proximity to monitor how often anybody smokes
14 cigarettes, right now.

15 Q. Have you observed, just like the
16 secretary at Duke, go a period of time in which she
17 had to break and smoke a cigarette?

18 A. She wasn't my secretary, she was down the
19 hall. So I would just see her occasionally.

20 Q. Have you ever been in a lung cancer ward?

21 A. No.

22 Q. You've made the statement, and correct me
23 if I'm wrong, that the less well educated, if
24 anything, have a higher risk perception?

25 A. That's true.

1 Q. So if we had a very uneducated person,
2 they even think cigarettes are worse than everybody
3 else?

4 A. Or at least as bad.

5 Q. So you don't think that the cigarette
6 manufacturers would ever try to target the poor, the
7 young, the blacks? You don't think they would ever
8 try to do that because these people have high risk
9 perceptions? It would be foolish to target them for
10 marketing, wouldn't it?

11 A. There is an income elasticity as well in
12 that more affluent people are less likely to smoke.
13 So you would want to target the groups who are more
14 likely to smoke. If you are selling a product, you
15 wouldn't try to sell the product to groups who will
16 never smoke.

17 Q. So your comment that the uneducated have
18 higher risk perceptions, are you saying that would
19 cause them to want to smoke more?

20 A. No, that would cause them to smoke less,
21 but let me just point out that when we talk about the
22 uneducated, we are talking about the categories in
23 the Audits and Surveys data. So we are not talking,
24 let's say, about a person who never set foot in
25 school.

1 Q. I don't understand that. What's the
2 distinction? You are saying you are not making a
3 global statement; it's specific to the Audits and
4 Survey data?

5 A. Right. So would be less than high
6 school. It would be those educational categories
7 that I've analyzed.

8 Q. You don't think that the cigarette
9 manufacturers are targeting children and the poor
10 because they are the least likely to understand the
11 risk perceptions? You don't think that's true?

12 A. I don't have information on their
13 targeting of children.

14 Q. That's a fair point. I want you to
15 assume they target children, they target the poor,
16 they target the ignorant; that that's their target
17 market, that their documents say that's their target
18 market. I want you to assume that. If they target
19 that group, your comments today say that that group
20 has a higher risk perception than anybody else, as
21 high or higher?

22 A. Well, that group included the ignorant,
23 as you point out, and the ignorant, if you mean
24 ignorant of risk, it doesn't.

25 MR. ATKESON: Let me just interpose an

1 objection at this point. He was talking about the
2 uneducated as defined in Audits and Surveys. He was
3 not including the children and other things. Your
4 group was broader than that.

5 MR. KERRIGAN: It was.

6 BY MR. KERRIGAN:

7 Q. Let's take the 16- to 19-year-olds that
8 you claim have a higher risk perception than adults.
9 Let's take the uneducated that you claim have a
10 higher risk perception than anybody else. And then
11 I'm going to ask you to assume that the cigarette
12 manufacturers have been targeting these people --
13 hopefully, Dr. Viscusi, I'm not telling you something
14 that's just like startling news to you. But if it
15 is, I want you to assume in a hypothetical that they
16 have been targeting kids and they've been targeting
17 the uneducated, and that's where they are trying to
18 sell these cigarettes and get people started smoking
19 and trying to addict them. I'm asking you if that is
20 mutually exclusive with your comments that these
21 people have an already higher risk perception than
22 anybody else.

23 A. No.

24 Q. Okay. Now explain to me, then, how that
25 marketing, if we are talking about a hypothetical,

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1 marketing to that group is going to produce the
2 results they want. They want to sell cigarettes in
3 that group.

4 A. A couple of things. First there is an
5 income effect. More affluent people are less likely
6 to want to smoke than are the less affluent, so that
7 that comes into play as well as risk perceptions.
8 Second, all advertisers want younger consumers. If
9 you look at TV shows and TV advertising, if you've
10 got an audience that's the 45-year-olds or the
11 50-year-olds, even if you have high ratings they will
12 cancel the show because that's not the consumer group
13 the companies try to influence. They try to
14 influence the younger consumers because that's where
15 people are starting their consumption decisions.

16 Q. Are you equating marketing by
17 manufacturers in the United States to the teen buying
18 market that's equivalent to the cigarette
19 manufacturers trying to sell their cigarettes to
20 teens? I want to make sure I understand. You say
21 that's kind of all the same; is that it?

22 A. I didn't say that. What I said is that
23 for the same reason that manufacturers of other
24 products would target 20-somethings rather than 40-
25 somethings, the cigarette industry would also target

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1 younger consumers rather than older consumers.

2 Q. Did you finish your explanation on how
3 targeting to the poor, the uneducated, and the
4 children comports with your belief that the 16- to
5 19-year-olds and the uneducated have higher risk
6 perceptions? Did you finish the answer to that
7 question?

8 A. I believe so.

9 Q. You are satisfied the answer is
10 responsive to the question and expresses your
11 opinion?

12 A. There are other factors other than risk
13 beliefs that will influence targets.

14 Q. You made this statement: "They could
15 release the studies," referring to the tobacco
16 manufacturers. This is page 227 of your Mississippi
17 deposition. "There is nothing preventing them from
18 releasing it. I think it would be very difficult for
19 them to supply an interpretation of what the studies
20 meant because they might be criticized for anything
21 that attempted to give people the perception that
22 smoking did not have a 100 percent probability of
23 killing you, because that seems to be the distorted
24 perspective of many critics of smoking." Did you
25 make that statement?

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1 A. Yes.

2 Q. Who believes it has 100 percent
3 probability of killing you? Would you name the
4 people.

5 A. Every time this morning you said cause, a
6 lot of people would interpret that to mean 100
7 percent probability, because you did not want to
8 admit probabilistic terminology. And I think that's
9 a misperception if you say cause in that manner. So
10 that's where the kinds of misperceptions could arise.

11 Q. What did you say? I did not want to
12 admit probabilistic --

13 A. We went around and around in circles. I
14 don't know if you remember, but you wanted to say
15 caused lung cancer, caused disease X, and I did not
16 want to deal with that unless you included the fact
17 that this causation relationship was probabilistic,
18 that it was not a certainty, that there was some
19 probability.

20 Q. In other words, it's not a certainty
21 somebody is going to die of lung cancer because they
22 smoke a lot of cigarettes; they could die of coronary
23 artery disease, they could die or cirrhosis of the
24 liver, they could die of other things; is what you
25 are saying?

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1 A. That's correct.

2 Q. What is mutually exclusive about that and
3 cigarette smoking causes lung cancer? Just something
4 else got them quicker.

5 A. You are assuming if they had not died of
6 heart disease, they eventually would have been killed
7 by smoking -- it's that kind of certainty mentality
8 that I think is wrong.

9 Q. I didn't say that. I'm just asking
10 you --

11 A. You did. You said something else got
12 them quicker. That implies that had that something
13 else not killed them, lung cancer would have. And
14 that shows the kind of fallacies that that kind of
15 statement can lead to.

16 Q. You know what's fascinating about this
17 discussion, is you are just as certain of your
18 position is that since we don't know, it can't be
19 true. How do you know that if somebody smoked 150
20 years they wouldn't all get lung cancer and die
21 absent any other causes of death? How do you know
22 that?

23 A. I don't really care what happens in 150
24 years. I care what happens in people's lifetimes.
25 And to tell people if we lived in a fantasy land that

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1 you lived 150 years, you have to worry about
2 something in year 140, I don't think that fosters
3 accurate risk beliefs.

4 Q. How about this warning: "Cigarette
5 smoking is like Russian roulette. May not kill you
6 but it can." How about that? That's really an
7 accurate risk perception, isn't it?

8 A. No, because you are not telling people
9 the probability.

10 Q. Let's say you give them the probabilities
11 that you have of death.

12 A. I wouldn't recommend that warning even if
13 I were an antismoking advocate, as opposed to a
14 hazard warning advocate, because saying things like
15 Russian roulette makes it enticing and adventuresome,
16 and I don't think you want that. You want to
17 characterize the risk.

18 Q. How many times have you testified?

19 A. I don't know.

20 Q. Over 100?

21 A. No, I haven't even been deposed that many
22 times.

23 Q. Have you spent any time with any focus
24 group people on testifying? Any leaders of focus
25 groups or any focus group organizations?

1 A. No.

2 Q. Have you spent any time with lawyers
3 about how to testify, how to respond to questions,
4 that sort of thing?

5 A. Other than the one-minute briefing before
6 walking into depositions, no.

7 Q. So you've never had anybody assist you in
8 how to give answers to questions that weave into the
9 answers material that the questions did not ask?
10 You've never had anybody show you how to do that or
11 counsel you how to do that? Not that you did that
12 today; I'm just saying no one has taught you that
13 method of answering questions that takes the question
14 to an area that you want to respond to.

15 A. No, and I was not aware that I did that
16 until you pointed that out. I'm not sure I do do
17 that. It's not a skill that I was taught or was
18 aware that I developed.

19 Q. Have you ever had your testimony reviewed
20 by anybody, critiqued and looked at a written report
21 or critique of your testimony?

22 A. Not to the best of my knowledge.

23 Q. What about orally, orally critiqued your
24 testimony: Dr. Viscusi, this is the way you do this
25 and then you look at the jury this way and then you

1 turn this way, and when he asks this questions you do
2 this or that? Have you had that kind of --

3 A. I've never had anything like that. All I
4 get is when I'm done, they may say something like,
5 "Good job." One-sentence summary comments when I'm
6 done with the testimony, but no training of any sort.

7 Q. Okay. You attempted to answer the
8 questions I've asked today based on the questions
9 that were answered -- asked and not what you tried to
10 weave into the answer, you did not intend to do that
11 today?

12 A. No.

13 Q. Let me ask you if you've made this
14 statement, that your view about the lifetime costs of
15 smoking is not the kind of view that has many
16 advocates. Have you ever said that?

17 A. Yes.

18 Q. "The antismoking constituency does not
19 like to hear that smokers pay their own way." Did
20 you make that statement?

21 A. I certainly did.

22 Q. "Since the underlying premise of my
23 argument is that smoking kills people, that is not
24 the kind of argument that the cigarette companies
25 would embrace with enthusiasm either."

1 A. I've said that as well.

2 Q. You take the position that smokers are
3 paying their own way?

4 A. Yes, in terms of these costs, yes, I do.

5 Q. What incentive did -- let me just strike
6 that. We talked about this discount rate business,
7 and I think you knew -- let me withdraw that. Is
8 there a difference between a social discount rate and
9 the individual discount rate? Those concepts have
10 any meaning to you?

11 A. Social discount rate is what you would
12 want to use to value government projects, and the
13 literature on that suggests you want a lower discount
14 rate than the private discount rate.

15 Q. Any difference, any significant
16 difference in your analysis where you elected to use
17 3 percent?

18 A. Any significant difference from what?

19 Q. Do these terms have any difference that
20 have any impact on your election to use 3 percent;
21 that is, if it's a social discount rate, individual
22 discount rate?

23 A. I was using the real rate of return to
24 capital. I was not lowering that rate to take into
25 account the fact society might want to transfer

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1 resources to future generations.

2 Q. And you were not raising the rate for --
3 what was the reason? You always want to go to lower
4 the rate, and for some reason you don't want to ever
5 discuss about raising the rate. Let's talk about
6 raising the rate. What was the reason you didn't
7 raise the rate again? I know why you didn't lower
8 the rate.

9 A. No reason to raise the rate because
10 that's the private rate of return, and the social
11 rate of discount literature argues the rate should be
12 lower than the private rate of return.

13 Q. If you raise the rate, you don't get the
14 results that you got?

15 A. It affects the results, but cigarettes
16 still pay their own way at higher rates, once you
17 count excise taxes. Depends on how high you go.

18 Q. Have you made a calculation with excise
19 taxes to show us how high the rate can go where
20 cigarette rates are still -- or cigarettes still
21 produce a net positive effect for the state?

22 A. I haven't done that. I've done the state
23 calculations for zero percent, 3 percent, 5 percent.

24 Q. I think there was an indication that you
25 were going to testify that the proper methodology for

1 BY MR. KERRIGAN:

2 Q. What I was going to suggest is if you do
3 a longitudinal study in health care of people who
4 smoke cigarettes, you find a dramatic increase in the
5 morbidity costs, dramatic increase from what we see
6 in the Medicaid costs. Are you familiar with what
7 I'm talking about, or do you have any response to
8 that?

9 A. My estimates of the health costs overall
10 to society are higher than the Medicaid costs.
11 That's correct.

12 Q. Following an individual patient, person,
13 for their lifetime, I'm suggesting would show that
14 the actual morbidity associated with cigarette
15 smoking is dramatically higher than we are able to
16 now assess with the methodology we now have, since we
17 don't have longitudinal studies. Would you agree
18 with that or disagree with that?

19 A. If we don't have longitudinal studies,
20 then we don't know what they are going to show.

21 Q. Excellent point. From anecdotal exposure
22 to individual patients, would you agree with me, or,
23 if you know, that if we had such longitudinal studies
24 what we would demonstrate is that the costs
25 associated with cigarette smoking is substantially

1 analyzing the economic impact of smoking in this case
2 is a longitudinal lifetime analysis?

3 A. That's the ideal way, and certainly you
4 always want to do a lifetime analysis.

5 Q. Let me suggest something to you about
6 that and see if you think it's colorable.

7 MR. KERRIGAN: By the way, Counsel, when
8 we were given -- and I would just ask you at your
9 convenience send me this Cigarette Taxes to Fund
10 Health Care Reform publication that I couldn't read
11 the one I got because of copying problems. It's
12 mushed. Apparently somebody highlighted it, and the
13 highlighting obscured the text.

14 MR. ATKESON: I will represent that's the
15 copy I have. That's the copy that the witness has,
16 but I will --

17 MR. KERRIGAN: You are not obligated to
18 do that. I will go to the primary source. I just
19 thought if you had a good copy --

20 MR. ATKESON: Unfortunately, that is the
21 nature of the copy we have.

22 MR. KERRIGAN: I started the question,
23 and then I digressed. Can you give me -- no, that
24 was my fault. Can you give me the question back.

25 (The last question was read back.)

1 higher than we are able to see in the models that we
2 now have? Would you agree with that?

3 A. I have no reason to believe that current
4 models substantially underestimate the medical costs.

5 Q. You've given many opinions today on the
6 questions that I've asked. Do you have any -- do you
7 know of any additional major subject areas? I
8 wouldn't hold you to some aside or some observation
9 or study or something, but I'm asking if you know
10 there is any major areas that you are going to be
11 called to testify on. We've dealt with risk
12 perception and the lifetime analysis of economic
13 costs. Do you know of any other area?

14 A. No, those are the two main focal points
15 articulating the lifetime analysis.

16 Q. And the tax issue that I understand you
17 may -- is that what you were about to say?

18 A. No.

19 Q. Did you have anything else?

20 MR. ATKESON: Let me interpose, Counsel,
21 in his disclosure we have indicated that on the
22 lifetime analysis, he is not only going to say what
23 he has done, but he is going to say what he believes
24 is wrong with the approach that your experts are
25 taking. And if you include that within the lifetime

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1 analysis, so be it, but you haven't asked him.

2 BY MR. KERRIGAN:

3 Q. Without waiving our objection to any
4 expert expressing an opinion about any other expert,
5 which is a legal issue, you apparently hold some
6 opinions about some of the experts in the Florida
7 case, based on what counsel just said?

8 MR. ATKESON: It's not about the
9 experts. It's about the approach they have taken.

10 MR. KERRIGAN: Approach they have taken.

11 MR. ATKESON: Nothing to do with the
12 experts.

13 MR. KERRIGAN: Okay.

14 BY MR. KERRIGAN:

15 Q. So what opinions do you have about the
16 approaches that have been taken to model damages in
17 Florida?

18 A. The main opinion is that you should do a
19 lifetime analysis, and you should approach it using
20 the but-for smoking framework. What would the costs
21 to the State of Florida had been but for smoking
22 during the period which you are alleging that the
23 cigarette industry is liable for these costs. So you
24 want to limit the cost calculations to that
25 particular time period, and you want to analyze the

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1 trajectory of costs incurred by smokers compared to
2 nonsmokers, taking into account the lifetime analysis
3 and its consequences.

4 Q. Have you done that before?

5 A. That's what my paper does. It does the
6 lifetime analysis but --

7 Q. Vis-a-vis the Medicaid expenditures;
8 that's what I was asking you. Do you come up with
9 something concrete that we can say, okay, here is
10 what Dr. Viscusi is saying are the damages in Florida
11 caused by cigarette smoking, even if it is a negative
12 figure? Can you give us that figure today and how
13 you arrived at it?

14 A. Just what's in that paper there that you
15 have.

16 Q. And what's in that paper shows 8 cents a
17 pack contribution to the state positive, plus excise
18 taxes?

19 A. That's correct.

20 Q. Nothing else? Haven't missed anything?

21 A. That's right.

22 MR. ATKESON: Counsel, just so -- I just
23 want to do this so you haven't missed anything here.
24 I wanted him to tell you, just so you are aware of it
25 and you can ask him about it, when you said in terms

1 of your experts' approach there has to be a time
2 period involved, okay, his approach doesn't involve a
3 time period. And he is saying that to analyze this
4 first way properly, he needs to have a time period in
5 it. I do that so that --

6 MR. KERRIGAN: I think that's helpful.

7 BY MR. KERRIGAN:

8 Q. Why don't you restate to me precisely
9 what your opinion is in regards to this time frame
10 that counsel is referring to here. What is your
11 opinion?

12 A. Well, if the nature of your complaint is
13 that the cigarette industry had some kind of behavior
14 during some specified time period that led to harm to
15 the State of Florida, then we should only count the
16 costs attributable to smoking during that time period
17 when these actions that they shouldn't have taken
18 were taken by the industry.

19 Q. I understand that position. Okay. And I
20 understand that testimony. You are saying insofar as
21 any allegation of the State of Florida deals with
22 alleged bad conduct by the defendants, it was a
23 precipitous cause of someone starting to smoke, that
24 you have to look at that individual and the net
25 effect of that individual starting to smoke; is that

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1 accurate or inaccurate?

2 A. And the net effect of that conduct on
3 whether the person smokes. So if the person would
4 have smoked anyway --

5 Q. Right.

6 A. -- and your lawsuit is only about the
7 conduct, it's only the incremental effect of the
8 conduct, and if there is no effect of conduct on
9 behavior, zero. So there is nothing there to talk
10 about.

11 Q. You mentioned the term elasticity of
12 demand, and I want to pursue that just briefly with
13 you. Is there -- what is the elasticity of demand
14 for teenage smoking, 16 to 19, if you know?

15 A. There is a debate over that. Some people
16 think it's comparable to that of adults, which would
17 be about minus .4. Other people think it's highly
18 elastic and the elasticity is greater than minus 1.

19 Q. What do you think?

20 A. I've written that there is a debate, but
21 I tend to place greater weight in my discussions on
22 the highly elastic estimates done by Michael Grossman
23 and his colleagues, as opposed to the less elastic
24 estimates done by people at the Rand Corporation, but
25 we don't really know for sure.

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1 Q. Have you expressed any opinions or do you
2 hold any opinions regarding the effect of secondhand
3 or environmental tobacco smoke?

4 A. Yes.

5 Q. What are those opinions?

6 A. I've written about those in my article
7 that was in the National Bureau of Economic Research
8 volume, and I indicated that I thought the medical
9 evidence at the current time was still highly
10 uncertain. Nevertheless, I used the low-end
11 estimates, the midpoint estimates, and the high-end
12 estimates developed by EPA and OSHA for the
13 environmental tobacco smoke risks to calculate the
14 costs associated with environmental tobacco smoke.

15 Q. Do you think by your training and
16 expertise that you are able to evaluate the medical
17 literature on epidemiology?

18 A. I was a consultant to the EPA study that
19 I'm critiquing. So for whatever reason, EPA asked me
20 to be a consultant on this very same study. You can
21 draw your own conclusion from that, but I don't think
22 that that's an accident. I'm not a physician, but
23 there are reasons people ask me to assess risk
24 studies.

25 Q. And I think not to be too modest about

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1 it, you claim a certain expertise, do you not, in
2 epidemiology?

3 A. No, I'm not an epidemiologist.

4 Q. Well, again, I get back to my question.

5 Not based on what some government agency may have
6 agreed or actually asked you to do, I'm just asking,
7 are you intellectually and academically qualified to
8 review the epidemiological literature and express an
9 opinion on secondhand smoke?

10 A. I can review statistical studies, and I
11 can critique their statistical analyses. So to that
12 extent I do have the professional skills to critique
13 that portion of the analysis.

14 Q. In your course at the Harvard Law School,
15 you teach some law, do you not?

16 A. I don't teach a law course per se in the
17 sense that I don't teach torts. I teach risk and
18 environmental regulation, empirical methods for
19 lawyers, economics of regulation and antitrust --
20 those kinds of issues.

21 Q. Do you plan to do any additional work on
22 any of the matters that you discussed with us today
23 prior to your testifying in Florida?

24 A. I'm sure I will.

25 Q. In what areas will you do work?

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1 A. I would continue my review of the
2 analyses done for the plaintiffs. I will continue my
3 analysis of the Audits and Surveys data, which I'm
4 working with now. I'm not sure what, if anything,
5 I'll do with my Florida-specific cost estimates that
6 are in the paper, but I may come with more detailed
7 estimates. So, for example, if the table doesn't
8 include the sick leave component, I'll perhaps, you
9 know, bring out the sick leave component from the
10 analysis so at least I know that answer.

11 Q. Do you know anything about the methods
12 that the state has used to look at the damages in
13 Florida, that is, the SAMMEC method and other
14 methods?

15 A. I haven't immersed myself in these
16 things. I've reviewed Jeffrey Harris's analysis.

17 Q. Do you have an opinion about that?

18 A. Yes.

19 Q. What is that opinion?

20 A. That his analysis is flawed because he
21 does not take the lifetime approach. He, in effect,
22 ignores the influence of smoking on longevity as part
23 of his analysis.

24 Q. That's the defect?

25 A. That's the most salient defect. I would

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1 call his analysis primarily a back-of-the-envelope
2 calculation as opposed to a detailed study.

3 Q. Back-of-the-envelope meaning kind of a
4 shot-from-the-hip sort of approach?

5 A. He went through several studies, figured
6 out relative costs of smokers and nonsmokers, but he
7 certainly didn't do the detailed kinds of breakdowns
8 of smoking costs by category for Medicaid, for sick
9 leave, for pension plans, for life insurance, et
10 cetera, that I've undertaken.

11 Q. You've undertaken this for Florida?

12 A. Yes, I have.

13 MR. KERRIGAN: Well, Counsel, I don't
14 know what he has done, but I know what I got, and I
15 don't have that.

16 MR. ATKESON: Well, Counsel, I think you
17 do.

18 MR. KERRIGAN: Okay.

19 MR. ATKESON: I don't think you
20 understood his testimony when he was talking about
21 the table. What he said was that if you go to the
22 total line at the end, that includes all of the
23 categories, even the ones that aren't printed on the
24 page. So sick leave, insurance.

25 MR. KERRIGAN: Right.

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1 MR. ATKESON: And all these that were
2 printed in the table are whatever, three or four,
3 whatever the categories are.
4 MR. KERRIGAN: Okay.
5 MR. ATKESON: Has done that analysis for
6 all 50 states.
7 MR. KERRIGAN: Right.
8 MR. ATKESON: Okay?
9 MR. KERRIGAN: Where is the output for
10 Florida?
11 MR. ATKESON: The output is in the
12 table.
13 A. It's in the bottom line.
14 BY MR. KERRIGAN:
15 Q. I understand the bottom line. I'm just
16 saying where is the detail?
17 MR. ATKESON: Let me just explain how
18 this came about. And if you want to inquire of him
19 further on it, you can.
20 MR. KERRIGAN: I just wonder where the
21 detail is. Have I seen it?
22 A. No. He has not seen it.
23 MR. ATKESON: I have not seen it. Do you
24 want to do this on the record or off the record?
25 MR. KERRIGAN: I think we better keep on

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1 the record. At this point the tape would be out of
2 the deposition, so we can go ahead and do it.
3 MR. ATKESON: He told us that he had
4 written an article that showed all 50 states. So we
5 said do you have something for Florida. He said
6 yes. We said, okay, we are going to designate you as
7 an expert in Florida on this. I asked him at the
8 time that we produced the information to you,
9 whatever, a couple of weeks ago, you know, do you
10 have any further break-out of anything that would --
11 in the article he does it specifically for
12 Mississippi as the example. I said, do you have the
13 equivalent of that for Florida. You know, it was all
14 tied up in however he did the article. He said I
15 don't have it broken out for Florida. I have the
16 results here. It's my understanding, I guess from
17 what he is saying, is that he has now -- he can do
18 for Florida the equivalent of the equations you see
19 in there for Mississippi. You can ask him about
20 that.
21 MR. KERRIGAN: I can't ask about
22 something I don't see.
23 MR. ATKESON: You can ask him what he has
24 done, at the very least.
25 MR. KERRIGAN: I guess the more relevant

1 question is, Where is it?
2 MR. ATKESON: Ask him.
3 BY MR. KERRIGAN:
4 Q. Where is this? You haven't shown it to
5 your lawyer. You haven't brought it to the
6 deposition. We haven't seen it. Where is it?
7 A. It's all back in my office, and
8 essentially when we are talking about what it is -- I
9 have piles of tables. But for Florida, if we turn to
10 the page where we have Mississippi, I have the analog
11 of the Mississippi table for Florida. Mississippi
12 state estimates. The analog of Table 2, which goes
13 through all these components, sick leave, no tar
14 level, tar level changes, Manning and all
15 assumptions, I can do that for any state.
16 Q. Dr. Viscusi, you know, we are here in the
17 end of July. This deposition has been scheduled for
18 some time. We have had witness disclosures. Why
19 haven't you given it, at least, to your lawyer, who
20 probably would have given it to me within 20 minutes.
21 but why haven't you given it to us?
22 MR. ATKESON: Counsel, I'm not sure
23 that's an appropriate question to the witness. You
24 and I can talk about discovery issues.
25 BY MR. KERRIGAN:

1 Q. Let me ask this: Why haven't you done
2 this? Why haven't you produced this?
3 A. This is buried in a computer program. So
4 this could be generated. Were I to digest the
5 information, I've printed out the state summaries
6 because that was the most meaningful way to summarize
7 it. At the time I did this article, I didn't know I
8 would even be here today.
9 Q. You understand my earlier questions when
10 I could not replicate from that table how you got to
11 that result. I guess my questions are probably
12 clearer now because I couldn't figure it out.
13 A. I tried to help you, I thought, by
14 pointing out some of these categories, like fires and
15 sick leave are subsumed in the total. I only show
16 the most salient components in this table. It was
17 mostly to save space. I was doing all 50 states.
18 Q. Where is the computer program that
19 generates this? Did you produce that?
20 A. No. It's done in conjunction with me and
21 my research assistant. I mean, it's not a fancy
22 program.
23 Q. The question wasn't how fancy it was.
24 A. North Carolina.
25 Q. Did you produce it?

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A. No.

Q. So we don't have the computer program and we don't have the output. We have the conclusion, but we don't have the output.

A. That's correct.

Q. Do you have any other opinions other than what you've expressed about Dr. Harris today, back of the envelope, doesn't take in lifetime costs or benefits? Do you have any other opinions about Dr. Harris's work?

A. What did he do? All he did do was look at the relative costs of smokers compared to nonsmokers. He excluded everything else out of the analysis. So I view his as a very partial analysis compared to mine. All of the ingredients of my analysis that are in my analysis are missing from his, except for some of the recognition of the higher medical costs of smokers.

Q. Dr. Viscusi, can you tell us today, I've done Florida and I estimate that Florida's Medicaid costs attributed to cigarette smoking is \$136 million for 1994-'95? Do you have a figure like that?

A. No, and I would have to multiply my cost per pack by the number of packs.

Q. But my question to you is, Have you made

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calculations of specific damages for those three years that we are dealing with here, '94-'95, '95-'96, '96-'97?

A. No, because since Florida has no net damages, according to my approach, there is no reason to do such calculation.

Q. Okay. So it's futile to do a calculation because, in essence, you would have a calculation showing how much money Florida is making because people are smoking cigarettes and dying?

A. Right. If my analysis is correct and it's adopted by the Court, there is no reason to go any further.

Q. Why would you want to do a break-out, then, of the Florida data like you did for Mississippi? What would be the point of that?

A. I think it's superfluous since we know that cigarette smoking pays its own way, and you don't really care it's a sick leave component or a fire component. Once you buy into my bottom line, we are done.

Q. So the details, interesting, but doesn't do much for the analysis?

A. If you don't do the details, you don't get the bottom line, but I don't have to tell you the

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details if you are willing to accept my bottom line. You are trusting me that I did a sick leave analysis and that's why -- or a fire analysis, and that's why my total numbers were different than the sum of the items in the columns.

Q. Let me say this so you are not on any communication problem. It's not that I'm trusting you to have done certain things that you claim you have done. I'm just trying to find out what you did do, what you didn't do, and what your results are. I don't, you know, ascribe to it, I'm not criticizing it. I'm just trying to find out what it is so we can understand what it is that you've actually done and how you reached the conclusions you've reached. What I seem to understand now is that you have a computer program that has produced specific results for Florida dealing with the items that are on the Mississippi schedule that produce the end result of .08 cents per pack net gain; is that right?

A. Yes.

Q. And that my ability to cross-examine you on all of that now is rendered impossible because I haven't seen the detail. I couldn't possibly cross-examine you on something I don't see.

MR. ATKESON: Counsel, let me suggest

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this.

MR. KERRIGAN: Yes.

MR. ATKESON: You two can go back and forth on this issue. If you would like, we would be happy to ask Dr. Viscusi to give us, you know, what he has got specific to Florida and go forward from there, if you would like to redepose him. I would point out the reason I asked my question earlier that you got upset about, and I apologize if you got upset about it, but the reason I asked it is it is my understanding that this case is only about Medicaid-related costs, which would be then the medical care and nursing home numbers here and would not have anything to do with pensions or anything else. The reason I asked you is to confirm that we are both operating on the same understanding. I don't know whether we are or we aren't, but in any event, you have the only two numbers in those categories here on this sheet, and the article tells you how they are calculated. Okay? And I don't know what more he has done with regard to those two numbers.

MR. KERRIGAN: I don't either. I don't know how he got those, but that's another matter.

MR. ATKESON: Counsel, I would point out that what the article says is that he built on the

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1 1994 article. That lists the formulas in there and
2 it's got an appendix. It says how each of those is
3 calculated. This then says how it's updated, and it
4 goes through how you go from the national number to a
5 state number, an average state number, and how you go
6 from an average state number to a particular state
7 number. All of that is detailed in the article.

8 MR. KERRIGAN: What's troubling now about
9 this is if we are finished with Dr. Viscusi, that's
10 fine with me. If we are finished with Dr. Viscusi.
11 I suspect we are not. And I suspect by the time we
12 get to trial, Dr. Viscusi will have charts and
13 diagrams and sick leave and a lot of other things
14 that I don't think are relevant here, but I just want
15 an opportunity to cross-examine if they are going to
16 be involved in the Florida litigation. You may say
17 they can't be involved in Florida litigation. We are
18 only dealing with nursing homes and medical care,
19 period.

20 MR. ATKESON: Counsel, that's the reason
21 I'm asking for your understanding because --

22 MR. KERRIGAN: But I don't know what he
23 has done, Counsel. I can't really respond.

24 MR. ATKESON: All I can do is tell you
25 what the article says.

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1 MR. KERRIGAN: I'm ready.

2 MR. ATKESON: I don't know any more about
3 what he has done than what he says in the article.
4 But the article says how he calculates for each state
5 a medical care number and a nursing home number. And
6 it's my understanding that since both of those relate
7 to Medicaid, that that's what is at issue in the
8 Florida case, and that Florida, unlike other states,
9 okay, doesn't have state employees and other things
10 mixed in. That being the case, since this was not
11 prepared for litigation and he did this on his own,
12 he just did a chart that said I'm taking Manning and
13 bringing it down to a state level. And he did it for
14 all the states. So for Florida, if we were to say
15 how does this relate specifically to Florida
16 litigation, he would probably take out some of the
17 columns. So to come up with the savings or
18 nonsavings in Florida, one would have to compare the
19 medical care cost number and the nursing home number.

20 MR. KERRIGAN: You would have to add
21 back -- arguably add back taxes and other things
22 too. I mean, I think that's a component of it, and I
23 don't know if that's out completely.

24 MR. ATKESON: You can ask him that.
25 Okay?

1 MR. KERRIGAN: Let me go back and ask
2 him.

3 MR. ATKESON: But, Counsel, let me just
4 say, I don't want to create any more problem than
5 there is. If it would make sense -- if this is the
6 last subject of your examination --

7 MR. KERRIGAN: It is.

8 MR. ATKESON: If it would make sense to
9 hold this open, we will ask him to give us those
10 documents, and we will give them to you, and we will
11 give you time to look them over, and you can
12 determine then whether or not you want to ask him any
13 more questions. I would be happy to do that.

14 MR. KERRIGAN: Without stipulating one
15 way or the other, it seems to me to be it's the only
16 thing that's left. I mean, I can't go on.

17 MR. ATKESON: I don't know if you've got
18 other subjects.

19 MR. KERRIGAN: No. I'm just saying on
20 this area, I don't see how I can go forward, but let
21 me finish to make sure I know what else is coming
22 along.

23 BY MR. KERRIGAN:

24 Q. You indicated that you were going to do a
25 Florida-specific analysis. Is that if you are asked

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1 by counsel, or do you just intend to do it? And if
2 the lawyers say we don't need that, you are not going
3 to do it, I assume?

4 A. If asked by counsel, I could prepare the
5 same kind of write-up I did there for Mississippi,
6 where I have a section on Mississippi, along with
7 Mississippi tables. I could essentially do the same
8 kind of thing for Florida, which would enable you to
9 better understand all the different numbers.

10 Q. Do you understand that Florida is
11 different than Mississippi in terms of state
12 employees?

13 A. Yes.

14 Q. And that the state employees are not
15 involved in Florida's damage model. Do you
16 understand that? I mean, this is not a component of
17 our damage case.

18 MR. ATKESON: Again, Counsel, to be
19 honest, I'm not participating in the Florida case
20 other than being here for the witness today. I don't
21 know what issues there are and aren't in the Florida
22 case.

23 MR. KERRIGAN: Let me tell you what they
24 are.

25 MR. ATKESON: So to ask the witness, do

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1 you know whether it is or is not, he isn't going to
2 know.
3 BY MR. KERRIGAN:
4 Q. Is it safe to say you can't express today
5 the opinions that you will express at the trial in
6 the Florida case because you are not sure exactly
7 what the damages are in the Florida case, what
8 damages are being sought? Is that a fair statement?
9 A. I know what I've done and I don't know
10 which components they will count at trial. So yes, I
11 do not know which things they think will be relevant.
12 Q. All right. You've talked about
13 Dr. Harris, the back-of-the-envelope and his lifetime
14 analysis deficiencies. Are there anything else in
15 Dr. Harris's work that you find to be not
16 satisfactory or --
17 A. As I said, I would have liked him to do a
18 fully comprehensive analysis like mine. He didn't.
19 MR. ATKESON: Let me pose a question. Is
20 this over and above his general objection about
21 plaintiffs' experts? You are talking about this
22 specific area?
23 MR. KERRIGAN: Just to Harris and I want
24 to go to each one of them.
25 MR. ATKESON: In other words, he said he

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1 had a general problem with the fact that their
2 analysis is not time bound.
3 MR. KERRIGAN: I understand that. He has
4 already testified to that, and I understand that.
5 MR. ATKESON: I just want to make sure we
6 are communicating clearly.
7 MR. KERRIGAN: I think he has said that a
8 couple of times.
9 BY MR. KERRIGAN:
10 Q. Any other objections about Dr. Harris?
11 A. No.
12 Q. Have you ever testified before the United
13 States Congress?
14 A. Yes.
15 Q. Have you ever testified about the cost of
16 cigarette smoking-induced illness and disease?
17 A. Before the U.S. Congress?
18 Q. Before the U.S. Congress.
19 A. No.
20 Q. Have you been asked to?
21 A. No.
22 Q. What matters were you testifying before
23 the Congress about, unless it was products liability,
24 and I don't want to go into that?
25 A. I've testified about regulatory reform,

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1 product liability, hazardous waste cleanup, economic
2 forecasts for the country in terms of inflation,
3 interest rates. Testified on the wage-price
4 guidelines of the Carter administration. These kinds
5 of issues. Hazard warnings for alcoholic beverages.
6 Q. Nothing about smoking?
7 A. No.
8 Q. Did you find any other deficiencies in
9 Dr. Tim Lynch's mortality ratio analysis and the
10 SAMMEC analysis?
11 A. I've read some of the Lynch
12 correspondence which seems to suggest that he does
13 believe in a lifetime approach. I've not reviewed
14 his analysis in detail. My main position with all
15 these people is that I think I've done the analysis
16 correctly, and I'm going to be using that as the
17 reference point for assessing these other people.
18 They should use the lifetime approach, et cetera, et
19 cetera.
20 Q. So you are not prepared today to discuss
21 the nuances of the SAMMEC model or mortality ratio
22 and disease categories and that sort of thing?
23 A. No.
24 Q. And costs associated therewith?
25 A. No.

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1 Q. Are you familiar with --
2 MR. ATKESON: Counsel, let me suggest, we
3 don't intend to ask him to do that.
4 MR. KERRIGAN: Okay. I just wanted to
5 cover him while we're here.
6 BY MR. KERRIGAN:
7 Q. What about Dr. Len Miller, Dr. Vince
8 Miller, are you familiar with their work?
9 A. I've heard their names. I have their
10 work. I think I have some of their work. I've not
11 reviewed their work in detail.
12 Q. Do you now believe that you will be
13 expressing any opinions in any major areas other than
14 the areas that we have covered today? Any other
15 significant areas in which you are going to express
16 an opinion? For example, you've already said you are
17 not going to do it on warning, but a major area like
18 that, methods of warning or that kind of testimony?
19 A. No.
20 Q. Risk perception, lifetime analysis,
21 deficiencies in Dr. Harris's approach by failing to
22 use lifetime analysis, back-of-the-envelope, and the
23 time period involved?
24 A. And my analysis.
25 Q. And your analysis, of course. Have we

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1 pretty well covered the areas in which you reasonably
2 anticipate that you are going to be giving testimony
3 in the Florida trial? I understand it could be some
4 minor thing or something. We don't play games about
5 that. I just want to know the major areas and make
6 sure we have all your opinions. The final question
7 is, Do you have any other opinions that I haven't
8 asked you about?

9 MR. ATKESON: You are including that
10 excise taxes as part of a lifetime analysis.

11 MR. KERRIGAN: It is.

12 MR. ATKESON: Fair enough.

13 BY MR. KERRIGAN:

14 Q. I suppose it's your opinion on the excise
15 taxes is the state collects excise taxes and it has
16 to be considered. Do you have an opinion beyond
17 that?

18 A. They should be credited to the cigarette
19 industry of doing a total tally.

20 Q. Right, right. I assumed that was your
21 testimony. Anything beyond that?

22 A. No.

23 Q. Okay. Any other opinions that you
24 believe you may express?

25 A. Nothing I plan to say in areas other than

1 arrives at it. I suspect that when we go through all
2 of this, he is not going to be adding anything for
3 Florida. That would be my guess. If he does, I need
4 to see it.

5 MR. ATKESON: I can tell you, it's our
6 intention not to ask him to add anything to Florida,
7 if that's helpful.

8 MR. KERRIGAN: I understand.

9 MR. ATKESON: Kip, in terms of making
10 those, whatever you've done, available to them and
11 showing how each of these numbers is calculated, what
12 is an appropriate time frame?

13 THE DEPONENT: To provide the Mississippi
14 tables, as well as the same write-up I gave there for
15 Mississippi for Florida, two weeks, because I'm not
16 in my office this week, and my son is visiting
17 Wednesday, Thursday, Friday, Saturday, Sunday, and
18 the following Monday, so I'm just not around.

19 MR. KERRIGAN: I don't mind that.

20 MR. ATKESON: If we could give it to you
21 the first week of August, is that --

22 MR. KERRIGAN: That would be fine, if in
23 fact you are going to give it to me, okay? I mean,
24 whoever makes that decision might say, "We're not
25 giving anything more."

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1 those.

2 Q. I want to assume that we got to the point
3 we've gotten here to in good faith in terms of
4 exchanging the information we've tried to exchange.
5 No bad faith intended to be implied. But in order
6 for me to ask any questions about any kind of a
7 breakdown beyond the schedules that I've seen, I
8 would have to see that and expect that it be faxed to
9 me.

10 MR. KERRIGAN: And we perhaps could do
11 him by telephone to supplement this deposition, which
12 I would agree to do. I'm not going to make any other
13 fuss about it, but I would like to look at it, until
14 you tell me, "I'm not going to even do that."

15 MR. ATKESON: Counsel, I'm not going to
16 tell you you can't do that. Just in terms of timing
17 here, let me just ask the witness when is the next
18 time he is going to be near where those documents
19 are. When you say fax, if he is not going to be near
20 them for a couple of days -- I don't want --

21 MR. KERRIGAN: We are not on a two- or
22 three-day timetable. We likely would supplement this
23 in middle August, I would imagine, by phone one
24 afternoon for an hour and get done with it. I want
25 to know what the schedule is for Florida and how he

1 MR. ATKESON: Counsel, no. I mean, I'm
2 the one who makes the decision.

3 MR. KERRIGAN: Oh, I'm sorry. Okay.

4 MR. ATKESON: And I'll tell you, whatever
5 he has got, we will give you, and we will show you,
6 again, based on my understanding here that we are
7 just talking about the medical stuff, we will show
8 you exactly how the numbers in the medical care
9 category and the nursing home category are
10 calculated. And if you would like to see -- I mean,
11 I don't think it's that much more work. We can show
12 you how the other numbers are calculated for Florida,
13 if that would be appropriate.

14 MR. KERRIGAN: I don't know that in
15 replicating --

16 MR. ATKESON: Taxes on there, whatever.

17 THE DEPONENT: Yes.

18 MR. KERRIGAN: I don't know that that
19 presents the problem. I think what presents the
20 problem to me is what's not in the schedule that I'm
21 looking at, okay?

22 MR. ATKESON: Sick leave and insurance.

23 MR. KERRIGAN: Whatever else.

24 MR. ATKESON: He has told you already,
25 these are -- if you had to have all the columns,

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1 these are all the columns. Okay? So what I will ask
2 him to do, then, is to give us the numbers for
3 Florida for each of these entries for a state cost.
4 You will find out, he will tell you, that from the
5 state perspective there is no cost for fires, okay,
6 but as to the rest of the items there is a cost,
7 okay? And I will ask him to tell us what each of
8 those are. Most of them are reported on the table,
9 but we will get all of them. And I will ask him to
10 give us the formulas that show exactly how each of
11 those are calculated.

12 MR. KERRIGAN: That's fine.

13 MR. ATKESON: Would that be sufficient?

14 MR. KERRIGAN: That's fine. We would
15 also like to have --

16 MR. ATKESON: Is that --

17 THE DEPONENT: It's work. This is more
18 than just doing the Mississippi write-up.

19 MR. ATKESON: I understand, but is it
20 doable, just so that he can --

21 THE DEPONENT: It's feasible. It's work.

22 MR. KERRIGAN: If we have two weeks as a
23 tentative timetable here --

24 MR. ATKESON: If we run into a problem,
25 we will let you know, but in any event --

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1 THE DEPONENT: I can give you answer
2 before I can give you the formulas. I can give you
3 tables before I can give you the formulas.

4 (Discussion off the record.)

5 THE VIDEOGRAPHER: We are off the
6 record. This is the end of Tape 3.

7 (The proceedings concluded at 2:25 p.m.)
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SIGNATURE OF DEPONENT

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2
3 I, the undersigned, W. KIP VISCUSI,
4 PH.D., do hereby certify that I have read the
5 foregoing deposition and find it to be a true and
6 accurate transcription of my testimony, with the
7 following corrections, if any:
8

9 PAGE LINE CHANGE REASON
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19 W. KIP VISCUSI, PH.D. Date
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CERTIFICATE OF REPORTER

1
2
3 I, Joanne Blair, Registered Professional
4 Reporter and Notary Public for the State of Florida,
5 do hereby certify:
6

7 That the foregoing deposition was taken before
8 me on the date and at the time and location stated on
9 page 1 of this transcript; that the witness was duly
10 sworn to testify to the truth, the whole truth, and
11 nothing but the truth; that the testimony of the
12 witness and all objections made at the time of the
13 examination were recorded stenographically by me and
14 were thereafter transcribed by computer-aided
15 transcription; that the foregoing deposition as typed
16 is a true, accurate, and complete record of the
17 testimony of the witness and of all objections made
18 at the time of the examination.

19 I further certify that I am neither related to
20 nor counsel for any party to the cause pending or
21 interested in the events thereof.
22
23
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1 Witness my hand, I have hereunto affixed my
2 official seal this 28th day of July, 1997, at Denver,
3 Colorado.
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9 Joanne Blair
10 Registered Professional
11 Reporter, CM
12 My commission expires
13 April 22, 1998
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